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Contents

Federal Register

Vol. 68, No. 28

Tuesday, February 11, 2003

Administration on Aging
See Aging Administration

Advisory Council on Historic Preservation
See Historic Preservation, Advisory Council

Aging Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6923–6924

Agriculture Department
See Food Safety and Inspection Service
See Forest Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 6868–6872

Antitrust Division
NOTICES
National cooperative research notifications:
DVD Copy Control Association, 6946
Petroleum Environmental Research Forum, 6946
Rotorcraft Industry Technology Association, 6946–6947
Sarnoff Corp., 6947
VSI Alliance, 6947

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6877–6878

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Hawaii, 6876
Nevada, 6876
North Dakota, 6876

Coast Guard
PROPOSED RULES
Ports and waterways safety:
San Diego Bay, CA; security zones, 6844–6847

Commerce Department
See Census Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 6876–6877

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Penick Corp., Inc., 6947–6952

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
Developing Hispanic-Serving Institutions Program, 6906–6907
Postsecondary education:
Higher Education Act; reauthorization, 6907–6908

Employee Benefits Security Administration
NOTICES
Employee benefits; class exemptions:
Litigation settlement-related plan transactions, 6953–6958

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Work Incentive Program—
People with disabilities; employment services and career advancement, 6958–6970
NAFTA transitional adjustment assistance:
Bristol Bay Native Association, 6970–6972

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Recommendations:
Administrative controls requirements; design, implementation, and maintenance, 6908

Environmental Protection Agency
NOTICES
Meetings:
Science Advisory Board, 6913–6915
Superfund; response and remedial actions, proposed settlements, etc.:
Ithaca Gun Co. Site, NY, 6916
Stickney Avenue Landfill and Tyler Street Dump Sites, OH, 6916–6918
Superfund program:
Prospective purchaser agreements—
Ithaca Gun Co. Site, NY, 6915–6916

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Hartzell Propeller Inc., 6815–6816
Standard instrument approach procedures, 6816–6820

Federal Communications Commission
RULES
Common carrier services:
Federal-State Joint Board on Universal Service—
Universal service contribution methodology; affiliate definition, 6832–6833
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 6918

Television broadcasting:
Channels 60-69; TV and DTV maximization applications; filing freeze, 6918–6919

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 6919

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Alabama and Virginia, 6828–6830
Various States, 6823–6828, 6830–6832
PROPOSED RULES
Flood elevation determinations:
Various States, 6847–6863
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6919–6921

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Southern LNG, Inc., 6911–6912
Hydroelectric applications, 6912–6913
Applications, hearings, determinations, etc.:
Dynegy Inc., 6909
GridAmerica LLC et al, 6909
Northwest Pipeline Corp., 6909–6910
Portland Natural Gas Transmission System, 6910
Regional Transmission Organizations et al., 6910
Southern LNG Inc., 6911
Virginia Electric & Power Co., 6911

Federal Housing Finance Board
NOTICES
Federal home loan bank system:
Processing and settlement of items, demand deposit accounting and other services; prices, 6921–6923

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Bull trout; Klamath River and Columbia River distinct population segments, 6863
NOTICES
Endangered and threatened species:
Recovery plans—
Bull trout, 6932–6934
Endangered and threatened species and marine mammal permit applications, 6931–6932
Marine mammal permit applications, 6934–6935

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Salinomycin, 6820
NOTICES
Harmonisation International Conference; guidelines availability:
Q3A impurities in new drug substances; revision, 6924–6925
Medical devices:
Export certificates; certification fees, 6925–6927

Food Safety and Inspection Service
NOTICES
Meat and poultry inspection:
New technology; notification procedures, 6873–6875

Foreign Assets Control Office
RULES
Reporting and procedures regulations:
Civil penalties information; disclosure, 6820–6823

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
Eastern Arizona Counties, 6875
Idaho Panhandle, 6875–6876

Health and Human Services Department
See Aging Administration
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Federal claims; interest rates on overdue debts, 6923
Meetings:
Vital and Health Statistics National Committee, 6923
Reports and guidance documents; availability, etc.:
Alternative fuel vehicle acquisition reports, 6923

Health Resources and Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6927

Historic Preservation, Advisory Council
NOTICES
Meetings, 6868

Indian Affairs Bureau
NOTICES
Liquor and tobacco sale or distribution ordinance:
Jicarilla Apache Tribe, NM, 6935–6938
Seneca Nation of Indians, NY, 6938–6941

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6985–6987

International Trade Administration
NOTICES
Antidumping:
Fresh Atlantic salmon from—
Chile, 6878–6880
Pasta from—
Italy, 6882–6884
Turkey, 6880–6882
Preserved mushrooms from—
India, 6884–6885
Saccharin from—
China, 6885

Silicon metal from—
Russian Federation, 6885–6889
Stainless steel sheet and strip in coils from—
Mexico, 6889–6891
Export trade certificates of review, 6891

Justice Department
See Antitrust Division
See Drug Enforcement Administration
See Justice Programs Office

Justice Programs Office
NOTICES
Meetings:
Violence Against Women National Advisory Committee, 6952–6953

Labor Department
See Employee Benefits Security Administration
See Employment and Training Administration

Land Management Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6941–6943
Meetings:
Resource Advisory Committees—
Salem, OR, 6944
Resource management plans, etc.:
Medford Resource Area, OR, 6944–6945

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Alaska OCS—
Oil and gas lease sales, 6945–6946

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 6927–6928
Meetings:
Scientific Review Center, 6928–6930
Patent licenses; non-exclusive, exclusive, or partially exclusive:
JENNEREX Pharmaceuticals, 6930–6931

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock, 6833–6837
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock, 6865–6867
Magnuson-Stevens Act provisions—
Domestic fisheries; exempted fishing permit applications, 6863–6864
NOTICES
Grants and cooperative agreements; availability, etc.:
John H. Prescott Marine Mammal Rescue Assistance Program; marine mammal stranding networks, 6891–6906
Meetings:
New England Fishery Management Council, 6906

Neighborhood Reinvestment Corporation
NOTICES
Meetings; Sunshine Act, 6972

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 6972

Office of United States Trade Representative
See Trade Representative, Office of United States

Presidential Documents
PROCLAMATIONS
Governors Island National Monument; establishment (Proc. 7647), 7051–7062

Public Health Service
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Railroad Retirement Board
RULES
Railroad Retirement Act:
Reconsideration and appeals requests; procedures clarification; correction, 6820

Securities and Exchange Commission
PROPOSED RULES
Investment advisers and investment companies:
Compliance programs, 7037–7050
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6972–6973
Submission for OMB review; comment request, 6973–6974
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 6974–6975
Chicago Board Options Exchange, Inc., 6975–6976
National Association of Securities Dealers, Inc., 6976–6982

Small Business Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 6982
Meetings:
Regulatory Fairness Boards—
Region III; hearing, 6982

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Kentucky, 6838–6842
North Dakota, 6842–6844

Surface Transportation Board
NOTICES
Railroad services abandonment:
CSX Transportation, Inc., 6984–6985

Trade Representative, Office of United States
NOTICES
Harmonized Tariff Schedule
Technical corrections, 6982–6984

Transportation Department
See Coast Guard

See Federal Aviation Administration
See Surface Transportation Board

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service

Valles Caldera Trust
NOTICES
National Environmental Protection Act; implementation, 6987–6996

Veterans Affairs Department
PROPOSED RULES
Disabilities rating schedule:
Musculoskeletal system, 6997–7035

Separate Parts In This Issue

Part II
Veterans Affairs Department, 6997–7035

Part III
Securities and Exchange Commission, 7037–7050

Part IV
Executive Office of the President, Presidential Documents, 7051–7062

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamation:

7647.....7053

14 CFR

39.....6815

97 (2 documents) 6816, 6818

17 CFR

Proposed Rules:

270.....7038

275.....7038

20 CFR

260.....6820

320.....6820

21 CFR

558.....6820

30 CFR

Proposed Rules:

917.....6838

934.....6842

31 CFR

501.....6820

33 CFR

Proposed Rules:

165.....6844

38 CFR

Proposed Rules:

3.....6998

4.....6998

44 CFR

65 (2 documents) 6823, 6826

67 (2 documents) 6828, 6830

Proposed Rules:

67 (2 documents) 6847, 6861

47 CFR

54.....6832

50 CFR

679.....6833

Proposed Rules:

17.....6863

600.....6863

679.....6865

Rules and Regulations

Federal Register
Vol. 68, No. 28
Tuesday, February 11, 2003

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–45–AD; Amendment 39–13049; AD 2003–04–01]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc., Model HD–E6C–3B/E13890K Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Hartzell Propeller Inc. HD–E6C–3B/E13890K propellers. This amendment requires the reduction of the original hub certified service (fatigue) life from unlimited hours to 37,400 flight hours. This amendment is prompted by a reevaluation by Hartzell Propeller Inc. of the D–5108–( ) original hub service life certification calculations. The actions specified by this AD are intended to prevent fatigue failure of D–5108–( ) hubs, which may result in loss of airplane control.

DATES: Effective March 18, 2003.

ADDRESSES: Information regarding this action may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone; (847) 294–7031, fax; (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Hartzell Propeller Inc. HD–E6C–3B/E13890K propellers was published in the **Federal Register** on September 23, 2002 (67 FR 59483). That action proposed to require the reduction of the original hub certified service (fatigue) life from unlimited hours to 37,400 flight hours. As a result of an in-service occurrence of a cracked hub, Hartzell Propeller Inc. has reevaluated the service (fatigue) life of the D–5108–( ) hub installed in the HD–E6C–3B/E13890K propeller. Hartzell has reduced the original hub certified service (fatigue) life from unlimited hours to 37,400 flight hours. Exceeding this life limit could result in fatigue failure of the hub, which may result in loss of airplane control. The 37,400 flight hour life limit is documented in the Airworthiness Limitations section of Hartzell Manual 161.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Risk If Life of a Component Is Not Known

One commenter states that the proposal introduces a life limit where there was none previously required. The commenter also states that there is a risk that operators or maintenance organizations may not know the current life of the applicable parts, and that the NPRM does not include any proposal to estimate usage or factoring where the life of a component is not known.

The FAA does not agree. Under 14 CFR 121.380 (a)(2)(ii), each registered certificate holder must keep records of the total time in service of each propeller. The propellers affected by this AD are flown on aircraft used in part 121 operations. Moreover, 14 CFR 121.380 mandates that the records must be retained for an unlimited time and must be transferred with the aircraft. In addition, the Airworthiness Limitations associated with this propeller have always required inspections at prescribed intervals which necessitate that the propeller usage be tracked. Therefore, if a propeller's total time is unknown, then the propeller and the registered certificate holder are not in compliance with the regulations. Presently, the FAA will not pursue policy to approve a general formula for calculating total time on propellers with unknown total times. Please note that the final rule allows for the submittal of data to request and to justify an alternate method of compliance to the AD or an adjustment of the compliance time in the AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 250 Hartzell Propeller Inc. HD–E6C–3B/E13890K propellers of the affected design in the worldwide fleet. The FAA estimates that 140 propellers installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per propeller to perform the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $20,000 per propeller. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $3,052,000.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–04–01 Hartzell Propeller Inc.: Amendment 39–13049. Docket No. 2000–NE–45–AD.

Applicability: This airworthiness directive (AD) is applicable to Hartzell Propeller Inc., Model HD–E6C–3B/E13890K propellers with D–5108–( ) hubs installed. These propellers are installed on, but not limited to, Fairchild Dornier GmbH 328–100 series airplanes.

Note 1: The parentheses indicate the presence or absence of an additional letter(s) which vary the basic propeller hub model designation. This AD still applies regardless of whether these letters are present or absent on the propeller hub model designation.

Note 2: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent fatigue failure of Hartzell D–5108–( ) hubs, which may result in loss of airplane control, do the following:

(a) Remove from service D–5108–( ) hubs before exceeding 37,400 flight hours and replace with a serviceable hub.

(b) After the effective date of this AD, do not install any D–5108–( ) hub that has accumulated 37,400 flight hours.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Effective Date

(e) This amendment becomes effective on March 18, 2003.

Issued in Burlington, Massachusetts, on February 4, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–3309 Filed 2–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30352; Amdt. No. 3043]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 11, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 11, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic

depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Dated: Issued in Washington, DC on January 31, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, AND 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/VME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.23RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective February 20, 2003

Franklin, VA, Franklin Muni-John Beverly Rose, VOR RWY 9, Amdt 14B
Franklin, VA, Franklin Muni-John Beverly Rose, VOR/DME RWY 27, Amdt 9C

Effective March 20, 2003

Bullhead City, AZ Laughlin/Bullhead Intl, RNAV (GPS) RWY 16, Orig
Bullhead City, AZ Laughlin/Bullhead Intl, RNAV (GPS) RWY 34, Orig
Bullhead City, AZ Laughlin/Bullhead Inti, GPS RWY 34, Orig-A, CANCELLED
Palmdale, CA, Palmdale Production Flt/Test Instln AF Plant 42, RNAV (GPS) RWY 25, Orig
Washington, DC, Washington Dulles International, ILS RWY 1L, Orig
Washington, DC, Washington Dulles International, ILS RWY 12, Amdt 7
Washington, DC, Washington Dulles International, ILS RWY 19L, Amdt 11
Washington, DC, Washington Dulles International, ILS RWY 19R, Amdt 22
Washington, DC, Washington Dulles International, ILS/DME RWY 1L, Amdt 5A, CANCELLED
Washington, DC, Washington Dulles International, CONVERGING ILS RWY 12, Amdt 4
Washington, DC, Washington Dulles International, CONVERGING ILS RWY 19L, Amdt 5
Washington, DC, Washington Dulles International, CONVERGING ILS RWY 19R, Amdt 5
Washington, DC, Washington Dulles International, RNAV (GPS) RWY 1L, Orig
Washington, DC, Washington Dulles International, RNAV (GPS) RWY 1R, Orig
Washington, DC, Washington Dulles International, RNAV (GPS) Y RWY 12, Orig
Washington, DC, Washington Dulles International, RNAV (GPS) Z RWY 12, Orig
Washington, DC, Washington Dulles International, RNAV (GPS) RWY 19L, Orig
Washington, DC, Washington Dulles International, RNAV (GPS) RWY 19R, Orig
Daytona Beach, FL, Daytona Beach Intl, VOR OR GPS RWY 16, Amdt 18
Daytona Beach, FL, Daytona Beach Intl, NDB OR GPS RWY 7L, Amdt 26
Daytona Beach, FL, Daytona Beach Intl, RADAR–1 Amdt, 8
Daytona Beach, FL, Daytona Beach Intl, RNAV (GPS) RWAY 34, Orig
Tampa, FL, Vandenberg, LOC RWY 23, Orig
Rexburg, ID, Rexburg-Madison county, VOR RWY 35, Amdt 4
Bay St. Louis, MS, Stennis Intl, NDB RWY 18, Amdt 1
Bay St. Louis, MS, Stennis Intl, ILS RWY 18, Orig
Olive Branch, MS, Olive Branch, LOC RWY 18, Amdt 1, CANCELLED
Olive Branch, MS, Olive Branch, ILS RWY 18, Orig
Omaha, NE, Eppley Airfield, NDB RWY 14R, Amdt 24D
Omaha, NE, Eppley Airfield, ILS RWY 14R, Amdt 3
Omaha, NE Eppley Airfield, ILS RWY 18, Amdt 7
Omaha, NE, Eppley Airfield, RNAV (GPS) RWY 14R, Orig
Omaha, NE, Eppley Airfield, RNAV (GPS) RWY 18, Orig
Omaha, NE, Eppley Airfield, RNAV (GPS) RWY 32L, Orig
Omaha, NE, Eppley Airfield, RNAV (GPS) RWY 36, Orig
Omaha, NE, Eppley Airfield, GPS RWY 32L, Orig-A, CANCELLED
Morristown, NJ, Morristown Muni, RNAV (GPS) 5, Orig
Angel Fire, NM, Angel Fire, RNAV (GPS) RWY 17, Amdt 1
Montauk, MY, Montauk, RNAV (GPS) RWY 24, Orig
Plattsburgh, NY, Plattsburgh Intl, ILS RWY 17, Amdt 1
Plattsburgh, NY, Plattsburgh Intl, RNAV (GPS) RWY 17, Orig
Plattsburgh, NY, Plattsburgh Intl, RNAV (GPS) RWY 35, Qrig
Hickory, NC, Hickory Regional, RNAV (GPS) RWY 1, Orig
Hickory, NC, Hickory Regional, RNAV (GPS) RWY 6, Orig
Hickory, NC, Hickory Regional, RNAV (GPS) RWY 19, Orig
Hickory, NC, Hickory Regional, RNAV (GPS) RWY 24, Orig

Hickory, NC, Hickory Regional, GPS RWY 24 Orig, CANCELLED
Mount Pocono, PA, Pocono Mountains Muni, VOR RWY 13, Amdt 6
Mount Pocono, PA, Pocono Mountains Muni, RNAV (GPS) RWY 13, Orig
Amarillo, TX, Amarillo Intl, RNAV (GPS) RWY 13, Orig
Amarillo, TX, Amarillo Intl, RNAV (GPS) RWY 31, Orig
Amarillo, TX, Amarillo Intl, GPS RWY 13, Orig-A, CANCELLED
Amarillo, TX, Amarillo Intl, GPS RWY 31, Orig-A, CANCELLED
Highgate, VT, Franklin County State, VOR/DME RWY 19, Amdt 3
Highgate, VT, Franklin County State, RNAV (GPS) RWY 1, Orig
Highgate, VT, Franklin County State, GPS RWY 1, Orig, CANCELLED

The FAA published an Amendment in Docket No. 30350, Amdt. No. 3041 to Part 97 of the Federal Aviation Regulations (Vol. 68 FR No. 17, page 3811: dated January 27, 2003) under section 97.33 effective March 20, 2003, which is hereby amended to change effective date to read:

23 Jan 03:

Naples, FL, Naples Muni, RNAV (GPS), RWY 05, Amdt 1

[FR Doc. 03–3269 Filed 2–10–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30353; Amdt. No. 3044]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 11, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 11, 2003.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **FEDERAL REGISTER** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary FDC/T NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on January 31, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

. . . Effective Upon Publication

FDC date	State	City	Airport	FDIC No.	Subject
01/14/03 ...	UT	Salt lake City	Salt Lake City Intl	3/0326	ILS Rwy 16L, Amdt 1B
01/16/03 ...	DC	Washington	Ronald Reagan Washington National ...	3/0355	LDA/DME Rwy 19, Amdt 2A
01/16/03 ...	FL	Bartow	Bartow Muni	3/0365	RNAV (GPS) Rwy 27R, Orig
01/16/03 ...	FL	Bartow	Bartow Muni	3/0368	RNAV (GPS) Rwy 9L, Orig
01/16/03 ...	WI	Watertown	Watertown Muni	3/0396	VOR/DME Rwy 29, Orig-A
01/16/03 ...	WI	Watertown	Watertown Muni	3/0397	NDB Rwy 5, Amdt 1B
01/17/03 ...	FL	Bartow	Bartow Muni	3/0374	VOR/DME Rwy 9L, Amdt 2A
01/17/03 ...	IA	Cedar Rapids	The Eastern Iowa	3/0412	GPS Rwy 31, Orig-E
01/21/03 ...	AK	Cold Bay	Cold Bay	3/0500	ILS Rwy 14, Amdt 16C
01/22/03 ...	TX	Wichita Falls	Sheppard AFB/Wichita Falls Muni	3/0517	RNAV (GPS) Rwy 15R, Orig
01/22/03 ...	TX	Fort Worth	Fort Worth Meacham Intl	3/0519	ILS Rwy 34R, Amdt 1A
01/22/03 ...	TX	Fort Worth	Fort Worth Meacham Intl	3/0520	ILS Rwy 16L, Amdt 7A
01/22/03 ...	WA	Bremerton	Bremerton National	3/0525	NDB Rwy 1, Amdt 1
01/23/03 ...	WI	Green Bay	Austin Straubel Intl	3/0540	ILS Rwy 6, Amdt 21
01/23/03 ...	ND	Minot	Minot, ND	3/0541	ILS Rwy 31, Amdt 9
01/23/03 ...	KY	Prestonburg	Big Sandy Regional	3/0542	RNAV (GPS) Rwy 22, Orig
01/23/03 ...	TN	Smithville	Smithville Muni	3/0554	RNAV (GPS) Rwy 24, Orig
01/23/03 ...	GA	Brunswick	Malcolm McKinnon	3/0569	RNAV (GPS) Rwy 4, Orig
01/23/03 ...	TX	Fort Worth	Fort Worth Meacham Intl	3/0574	GPS Rwy 34, Orig-B
01/23/03 ...	CA	Daggett	Barstow-Daggett	3/0606	VOR OR TACAN Rwy 22, Amdt 8A
01/24/03 ...	AR	Mountain View	Mountain View Wilcox Memorial Field ..	3/0632	NDB–A, Amdt 2
01/24/03 ...	NY	Rochester	Greater Rochester Intl	3/0653	VOR Rwy 4, Amdt 9A
01/27/03 ...	AR	Pine Bluff	Grider Field	3/0677	ILS Rwyt 17, Amdt 2A
01/28/03 ...	NY	Massena	Masenna Intl-Richards Field	3/0709	ILS Rwy 5, Amdt 2
01/28/03 ...	NY	Watertown	Watertown Intl	3/0710	ILS Rwy 7, Amdt 6B
01/28/03 ...	TX	Harlingen	Valley Intl	3/0719	LOC BC Rwy 35L, Amdt 13
01/28/03 ...	ID	Twin Falls	Joslin Field-Magic Valley Regional	3/0728	ILS Rwy 25, Amdt 8
01/28/03 ...	NE	Scottsbluff	Western Nebraska Regional/William B. Heilig Field.	3/0732	ILS Rwy 30, Amdt 9
01/28/03 ...	NY	Plattsburgh	Plattsburgh/Clinton Co	3/0740	ILS Rwy 1, Amdt 4A

[FR Doc. 03–3268 Filed 2–10–03; 8:45 am]
BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Parts 260 and 320

RIN 3220–AB03

Requests for Reconsideration and Appeals Within the Board; Correction

AGENCY: Railroad Retirement Board.

ACTION: Final rule; correction.

SUMMARY: The Railroad Retirement Board (Board) published in the **Federal Register** of December 17, 2002, a document that simplified the procedures that govern requests for reconsideration and appeals within the Board. Sections 260.9(b) and 320.39(a) inadvertently contained inaccurate terminology. This document corrects that terminology.

DATES: Effective on February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board published a document in the **Federal Register** of December 17, 2002 (67 FR 77152). That document simplified the procedures that govern requests for reconsideration and appeals within the Board. We discovered that inaccurate terminology was contained in § 260.9(b) and § 320.39(a). This document corrects that terminology.

In rule FR Doc. 02–31640 published on December 17, 2002 (67 FR 77152), make the following corrections. On page 77156 in § 260.9(b), in the first column (line 4 thereof), and on page 77157 in § 320.39(a), in the third column (line 21 thereof), remove the word ''reconsideration'' and insert in their place the words ''hearings officer's''.

By Authority of the Board.

Dated: February 4, 2003.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 03–3308 Filed 2–10–03; 8:45 am]
BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Intervet, Inc. The supplemental ANADA provides for use of a salinomycin Type A medicated article to make Type C medicated feeds used for the prevention of coccidiosis in roaster and replacement (breeder and layer) chickens and for the prevention of coccidiosis in quail.

DATES: This rule is effective February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Intervet, Inc., P.O. Box 318, 405 State St., Millsboro, DE 19966, filed a supplement to ANADA 200–075 that provides for use of SACOX (salinomycin) Type A medicated article to make Type C medicated feeds used for the prevention of coccidiosis in roaster and replacement (breeder and layer) chickens and for the prevention of coccidiosis in quail. The supplemental ANADA is approved as of November 8, 2002, and the regulations are amended in 21 CFR 558.550 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558--NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.550 [Amended]

2. Section 558.550 *Salinomycin* is amended in paragraph (a)(2) by adding ''(d)(2)(i),'' numerically.

Dated: January 21, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center of Veterinary Medicine.

[FR Doc. 03–3351 Filed 2–10–03; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 501

Rules Governing Availability of Information

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control (''OFAC'') of the U.S. Department of the Treasury is issuing a final rule concerning the disclosure of certain civil penalties information. OFAC intends to publish information about civil penalties imposed and informal settlements on a weekly basis. If the publication falls on a holiday, or if required by an emergency, publication may be postponed to the following week.

DATES: This rule is effective February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Chief of Civil Penalties, tel.: 202/622–6140, or Chief Counsel, tel. 202/622–2410.

SUPPLEMENTARY INFORMATION:

Background

OFAC published a proposed rule on June 19, 2002 (67 FR 41658–59), announcing a new practice of releasing certain civil penalty enforcement information on a routine basis. OFAC received public comments on the proposed rule from thirty-two persons, including financial institutions, law firms, trade associations, individuals, and a public interest group. Six commenters generally supported the proposed rule, and many of these also urged the release of other types of information. Nine commenters generally opposed the proposed rule, particularly the proposal to release the names of entities involved in civil penalty actions. Seventeen additional commenters fell in the middle; most of these commenters opposed releasing the names of entities, but otherwise they supported the proposed rule. OFAC appreciates the very useful comments it received in response to the proposed rule, and it has carefully considered all relevant comments and how best to resolve the issues they raise.

Entity Names. Among the commenters expressing reservations with the proposed rule, most opposed the naming of the entities involved in civil penalty actions. Some commenters argued that this information is likely to hurt the reputations of the entities involved, in part because the public may misunderstand the burdens of compliance with the economic sanctions programs OFAC administers. One commenter stated that public identification of foreign companies could trigger legal problems in their home countries, where compliance with U.S. economic sanctions may be prohibited. Some commenters also argued that identifying these entities would deter voluntary disclosures and informal settlements.

After considering these comments, OFAC has concluded that, in most instances, the identities of these entities are already available to the public under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552. Additionally, other governmental agencies, including some within the Department, periodically publish enforcement actions such as civil penalties assessed. Accordingly, OFAC has determined to publicize the identities of entities involved in civil penalty actions by periodic release under this rule. We believe most of the concerns identified in the public comments can be adequately addressed in the descriptions OFAC will provide, including whether the entity voluntarily disclosed the violation and whether the penalty enforcement action was settled without a finding that a violation occurred.

Descriptions of the Violations or Alleged Violations. Some commenters urged OFAC to draw a clear distinction between penalties (which represent a final agency determination that a violation has occurred) and settlements (which do not reflect such a determination) when releasing civil penalties information under this rule. Some also urged OFAC to recognize the entities that have made voluntary disclosures of the violations. OFAC agrees with these points and has revised the final rule accordingly.

One commenter urged OFAC also to distinguish between what it characterized as ''minor administrative infractions'' and ''more serious violations.'' OFAC expects that the gravity of each incident should be reflected in the brief description to be provided. On a related point, a different commenter asked that companies be permitted to negotiate how the incident is described in the releases of information under this rule. OFAC envisions providing a very brief, factual description of the violation or alleged violation (*e.g.,* ''unauthorized funds transfer to SDN bank'') and will not negotiate this limited description as part of the civil penalty settlement process. However, if an entity wishes to submit a proposed description, OFAC would certainly consider it, placing a premium on accuracy and brevity.

Advance Notice; Timing. Some commenters requested that OFAC give companies and other entities advance notice of up to 90 days before releasing information under this rule. One commenter urged that the information be released pursuant to a regular, predictable schedule; another commenter urged release within a day of reaching settlement or imposing a penalty. OFAC intends to release information regarding civil penalty actions on a weekly basis, beginning April 4, 2003. However, the final rule provides for disclosure on a ''routine basis, not less frequently than monthly,'' to afford OFAC some regulatory flexibility in preparing and releasing this information in the prescribed format. In the early implementation stages, OFAC intends to notify affected companies before information pertaining to them is made public under this rule.

Some commenters suggested that an entity should be able to avoid disclosure altogether by ''correcting'' the violation during a short period after a penalty is imposed or settlement reached. OFAC believes these commenters may misunderstand the administrative civil penalties process. An export, import, funds transfer, or other transaction that violates the economic sanctions programs OFAC administers cannot be ''corrected'' after it occurs. Any prudent person would take steps to prevent future violations, perhaps by investing in an improved compliance program, but these steps do not relieve an entity or individual of responsibility for completed violations.

Scope of Application/Adequacy of FOIA. Several commenters urged that the final rule apply only to penalties imposed or settlements reached after today's publication date. Some commenters argued that this rulemaking is altogether unnecessary because FOIA provides adequate procedures for releasing information to the public. OFAC disagrees with both these points and will implement this rule to include settlements and penalties that have occurred since March 2002. All of the information that OFAC would release under this rule is already subject to public release under FOIA. OFAC records on settlements with entities from May 1998 through March 2002 were publicly released under FOIA and have been placed in the Department of the Treasury's electronic reading room *http://www.treas.gov/foia/err_dof.htm*. OFAC has found, however, that processing FOIA requests for this type of information on an ad hoc basis is not the most efficient use of its limited resources. In the implementation of this rule, OFAC intends to release information on all penalties imposed and settlements reached since the end of March 2002.

Individual Names. In the preamble to the proposed rule, OFAC invited public comments on the potential disclosure of individual names. One commenter urged OFAC to release the identities of individuals whom OFAC penalizes or with whom OFAC reaches settlements. Other commenters opposed releasing the names of company employees who might be implicated in their employer's civil penalty or settlement; one of these commenters argued that any transparency benefits from releasing such employees' identities would be outweighed by the damage to their personal and professional reputations. OFAC is currently studying the issue of releasing individual names, including the names of individuals who were personally the subject of a civil penalties matter. For the present, the final rule provides for the release of information on proceedings against individuals on an aggregate basis, in

language substantially similar to the proposed rule.

Security Risks. Some commenters argued that release of this civil penalties information would provide clues to terrorists or others about which financial institutions have the weakest OFAC compliance programs. OFAC disagrees. The frequency of civil penalty actions does not necessarily correspond to the effectiveness of a financial institution's compliance program; a small community bank should be expected to have fewer incidents than a large financial institution that processes thousands of transactions daily. As noted above, this information about OFAC's civil penalties proceedings is already available to the public under FOIA, and OFAC does not see any substantial security risk in the implementation of this rule.

Additional Information. One commenter sought clarification of proposed section 501.805(d)(1)(iii), which provided that OFAC may, ''[o]n a case-by-case basis, * * * release additional information concerning a particular civil penalties proceeding.'' This subsection has been relocated to section 501.805(d)(4) in the final rule. Section 501.805(d)(4) is intended to clarify that this rule does not restrict OFAC's ability to disclose additional information about a penalty or settlement to the extent authorized by law. For example, the Department of the Treasury occasionally issues press releases to announce the conclusion of noteworthy OFAC civil penalty actions, and these press releases may include more detail than what is contemplated in the routine releases of information under this rule. OFAC does not intend to release any trade secrets or confidential business information it may acquire during the course of a civil penalty action.

A few commenters urged OFAC to publish, in the implementation of this rule, additional information unique to each civil penalty action. Some urged publication of an analysis of aggravating and mitigating factors in each case; others urged that we describe what the affected entity could have done to avoid the incident. With respect to settlements, one commenter urged that OFAC explain why it decided to settle a case rather than pursue a penalty. At this time, OFAC does not intend to release these types of information on a regular basis as part of the implementation of this rule. Some of this information would be privileged, and in each case preparing detailed additional information would encumber the prompt and efficient implementation of this rule.

Other Comments. OFAC received a wide variety of other comments, including suggestions that OFAC develop free compliance software for banks, add a ''frequently asked questions'' section to its website, and publish its internal civil penalties guidelines. These matters are not addressed in the final rule because they are outside the scope of this rulemaking. We note, however, that OFAC's website does include a ''frequently asked questions'' section *http://www.treas.gov/ofac* and that OFAC's enforcement guidelines are due to be published in the **Federal Register** in the near future.

Electronic Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register.** By modem, dial 202/512–1387 and type ''/GO FAC,'' or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat7 readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web, Telnet, or FTP protocol is *fedbbs.access.gpo.gov*.

This document and additional information concerning OFAC are available from OFAC's website *http://www.treas.gov/ofac* or via facsimile through OFAC's 24-hour fax-on-demand service, tel: 202/622–0077. Comments on this proposed rule may be viewed electronically via OFAC's website.

Regulatory Flexibility Act, Paperwork Reduction Act, and Executive Order 12866

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. The rule imposes no regulatory burdens on the public and simply announces that OFAC will publicly release certain information about civil penalties imposed and informal settlements. Accordingly, no regulatory flexibility analysis is required.

The Paperwork Reduction Act does not apply because the rule does not impose information collection requirements that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* A regulatory assessment is not required because this rule is not a ''significant regulatory action'' as defined in Executive Order 12866.

List of Subjects in 31 CFR Part 501

Administrative practice and procedure, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR Part 501 is amended as follows:

PART 501—REPORTING AND PROCEDURES REGULATIONS

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 1901–1908; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; 50 U.S.C. App. 1–44.

2. Section 501.805 is amended by adding paragraph (d) to read as follows:

§ 501.805 Rules governing availability of information.

* * * * *

(d) *Certain Civil Penalties Information.* (1) After the conclusion of a civil penalties proceeding that results in either the imposition of a civil monetary penalty or an informal settlement, OFAC shall make available to the public certain information on a routine basis, not less frequently than monthly, as follows:

(i) In each such proceeding against an entity, OFAC shall make available to the public

(A) The name and address of the entity involved,

(B) The sanctions program involved,

(C) A brief description of the violation or alleged violation,

(D) A clear indication whether the proceeding resulted in an informal settlement or in the imposition of a penalty,

(E) An indication whether the entity voluntarily disclosed the violation or alleged violation to OFAC, and

(F) The amount of the penalty imposed or the amount of the agreed settlement.

(ii) In such proceedings against individuals, OFAC shall release on an aggregate basis

(A) The number of penalties imposed and informal settlements reached,

(B) The sanctions programs involved,

(C) A brief description of the violations or alleged violations,

(D) A clear indication whether the proceedings resulted in informal settlements, in the imposition of penalties, or in administrative hearing requests pursuant to the Trading With the Enemy Act (TWEA), 50 U.S.C. 5(b), and

(E) The amounts of the penalties imposed and the amounts of the agreed settlements.

(2) The medium through which information will be released is OFAC's website at *http://www.treas.gov/ofac.*

(3) The information made available pursuant to paragraph (d)(1) of this section shall not include the following:

(i) The name of any violator or alleged violator who is an individual.

(ii) Records or information obtained or created in the implementation of part 598 of this chapter.

(4) On a case-by-case basis, OFAC may release additional information concerning a particular civil penalties proceeding.

Dated: January 10, 2003.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 14, 2003.

Kenneth E. Lawson,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 03–3310 Filed 2–6–03; 11:32 am]

BILLING CODE 4810–25–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–D–7535]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2878, or (email) *Michael.Grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Florida:					
Monroe	Unincorporated Areas.	January 14, 2003; January 21, 2003; *The Key West Citizen.*	Mr. James Roberts, Monroe County Administrator, 1100 Simonton Street, Key West, Florida 33040.	December 31, 2002	125129 C

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Orange	City of Ocoee	December 4, 2002; December 11, 2002; *The Orlando Sentinel*.	The Honorable S. Scott Vandergift, Mayor of the City of Ocoee, City Hall, 150 North Lakeshore Drive, Ocoee, Florida 34761.	March 12, 2003	120185 E
Orange	Unincorporated Areas.	December 27, 2002; January 3, 2003; *The Orlando Sentinel*.	Dr. M. Krishnamurthy, P.E., Orange County Stormwater Management Manager, 4200 South John Young Parkway, Orlando, Florida 32839.	December 13, 2002	120179 E
Orange	City of Orlando	December 27, 2002; January 3, 2003; *The Orlando Sentinel*.	The Honorable Glenda E. Hood, Mayor of the City of Orlando, 400 South Orange Avenue, Orlando, Florida 32802.	December 13, 2002	120186 E
Santa Rosa	Unincorporated Areas.	January 11, 2003; January 18, 2003; *The Press Gazette*.	Mr. Hunter Walker, Santa Rosa County Administrator, 6495 Caroline Street, Suite D, Milton, Florida 32570–4592.	December 31, 2002	120274 C
Leon	City of Tallahassee	December 17, 2002; December 24, 2002; *Tallahassee Democrat*.	The Honorable Scott Maddox, Mayor of the City of Tallahassee, City Hall 300 Adams Street, Tallahassee, Florida 32301–1731.	March 25, 2003	120144 D
Georgia: Cobb	City of Marietta	December 27, 2002; January 3, 2003; *Marietta Daily Journal*.	The Honorable Bill Dunaway, Mayor of the City of Marietta, 205 Lawrence Street, P.O. Box 3536, Marietta, Georgia 30061.	April 4, 2003	130226 D
Illinois:					
DuPage	Village of Carol Stream.	November 26, 2002; December 3, 2002; *The Daily Herald*.	The Honorable Ross Ferraro, Mayor of the Village of Carol Stream, 500 North Gary Avenue, Carol Stream, Illinois 60188.	December 19, 2002	170202 C
Kane	Unincorporated Areas.	January 14, 2003; January 21, 2003; *Kane County Chronicle*.	Mr. Michael W. McCoy, Chairman of the Kane County Board of Commissioners, 719 South Batavia Avenue, Geneva, Illinois 60134.	December 31, 2002	170896 F
DuPage	Village of Lisle	December 20, 2002; December 27, 2002; *Daily Herald*.	The Honorable Joseph Broda, Mayor of the Village of Lisle, 1040 Burlington Avenue, Lisle, Illinois 60532.	December 12, 2002	170211 B
Indiana: Allen	City of Fort Wayne ..	November 27, 2002; December 4, 2002; *The Journal Gazette*.	The Honorable Graham Richard, Mayor of the City of Fort Wayne, City-County Building, 1 Main Street, 9th floor, Fort Wayne, Indiana 46802–1804.	March 5, 2003	180003 E
Maryland:					
Frederick	City of Frederick	October 18, 2002; October 25, 2002; *Frederick News Post*.	The Honorable Jennifer P. Dougherty, Mayor of the City of Frederick, 101 North Court Street, Frederick, Maryland 21701.	January 24, 2003	240030 B
Harford	Unincorporated Areas.	January 10, 2003; January 17, 2003; *The Aegis*.	Mr. James M. Harkins, Harford County Executive, 220 South Main Street, Bel Air, Maryland 21014.	April 18, 2003	240040 D
Washington	Unincorporated Areas.	January 17, 2003; January 24, 2003; *The Herald Mail*.	Mr. Rodney Shoop, Washington County Administrator, 100 West Washington Street, Hagerstown, Maryland 21740.	April 25, 2003	240070 B
Massachusetts:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Middlesex	Town of Concord	December 5, 2002; December 12, 2002; *Concord Journal*.	Mr. Christopher Whelan, Manager of the Town of Concord, 22 Monument Square, P.O. Box 535, Concord, Massachusetts 01742.	November 22, 2002	250189 B
Michigan: Kent ...	City of Kentwood	January 10, 2003; January 17, 2003; *The Grand Rapids Press*.	The Honorable Bill Hardiman, Mayor of the City of Kentwood, P.O. Box 8848, Kentwood, Michigan 49518–8848.	December 31, 2002	260107 B
Mississippi:					
Hinds	City of Clinton	January 9, 2003; January 15, 2003; *The Clarion-Ledger*.	The Honorable Rosemary G. Aultman, Mayor of the City of Clinton, P.O. Box 156, Clinton, Mississippi 39060.	December 31, 2002	280071 D
Madison	City of Ridgeland	January 2, 2003; January 9, 2003; *The Clarion-Ledger*.	The Honorable Gene F. McGee, Mayor of the City of Ridgeland, P.O. Box 217, Ridgeland, Mississippi 39158.	April 10, 2003	280110 D
Madison	City of Ridgeland	January 30, 2003; February 6, 2003; *The Clarion-Ledger*.	The Honorable Gene F. McGee, Mayor of the City of Ridgeland, P.O. Box 217, Ridgeland, Mississippi 39158.	May 8, 2003	280110 D
New Hampshire: Grafton	Town of Holderness	December 5, 2002; December 12, 2002; *The Record Enterprise*.	Mr. Steve Huss, Chairman of the Town of Holderness Board of Selectmen, Holderness Town Hall, P.O. Box 203, Holderness, New Hampshire 03245.	March 13, 2002	330059 C
New Jersey:					
Union	Township of Berkeley Heights.	January 15, 2003; January 22, 2003; *The Courier-News*.	The Honorable David A. Cohen, Mayor of the Township of Berkeley Heights, 29 Park Avenue, Berkeley Heights, New Jersey 07922.	April 23, 2003	340459 E
Atlantic	City of Brigantine	November 29, 2002; December 6, 2002; *The Beachcomer News*.	Mr. George McDermott, Brigantine City Manager, Brigantine Municipal Building, 1417 West Brigantine Avenue, Brigantine, New Jersey 08203.	November 20, 2002	345286 B
New York: Erie	Town of Hamburg ...	December 12, 2002; December 19, 2002; *Hamburg Sun*.	Mr. Patrick H. Hoak, Hamburg Town Supervisor, 6100 South Park Avenue, Hamburg, New York 14075.	June 3, 2003	360244 D
Pennsylvania: *Chester Borough of Downingtown*	January 8, 2003; January 15, 2003; *Daily Local News*.	Mr. Casey Lalonde, Borough of Downingtown, Interim Manager, 4–10 West Lancaster Avenue, Downingtown, Pennsylvania 19335.	December 30, 2002	420275 E.	
York	Township of Springettsbury.	December 20, 2002; December 27, 2002; *The York Dispatch*.	Mr. Robert J. Sabatini, Jr., Springettsbury Township Manager, 1501 Mt. Zion Road, York, Pennsylvania 17402.	March 28, 2003	421031 A
York	Township of Spring Garden.	December 20, 2002; December 27, 2002; *The York Dispatch*.	Mr. Joseph F. Barrons, Spring Garden Township Manager, 558 Ogantz Street, York, Pennsylvania 17403.	March 28, 2003	420937 B
Commonwealth.	Puerto Rico	January 17, 2003; January 24, 2003; *The San Juan Star*.	The Honorable Sila Maria Canderon, Governor of the Commonwealth of Puerto Rico, Office of the Governor, P.O. Box 9020082, San Juan, Puerto Rico 00902.	April 25, 2003	720000 C
Tennessee:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Shelby	City of Memphis	December 30, 2002; January 6, 2003; *The Commercial Appeal*.	The Honorable Willie W. Herenton, Ph.D., Mayor of the City of Memphis, 125 North Main Street, Suite 700, Memphis, Tennessee 38103.	December 20, 2002	470177 E
Nashville and Davidson.	Metropolitan Government.	December 13, 2002; December 20, 2002; *The Tennessean*.	The Honorable William Purcell, Mayor of the Metropolitan Government of Nashville and Davidson County, 107 Metropolitan Courthouse, Nashville, Tennessee 37201.	December 6, 2002	470040 F
Shelby	Unincorporated Areas.	December 17, 2002; December 24, 2002 *The Commercial Appeal*.	The Honorable A.C. Wharton, Jr., Mayor of Shelby County, 160 North Main Street, Suite 850, Memphis, Tennessee 38103.	December 10, 2002	470214 E
Virginia: Loudoun	Town of Leesburg ...	January 3, 2003; *Loudoun Times Mirror*.	The Honorable Kristen Umstattd, Mayor of the Town of Leesburg, 25 West Market Street, P.O. Box 88, Leesburg, Virginia 20178.	December 30, 2002	510091 D
West Virginia: McDowell	Unincorporated Areas.	January 8, 2003; January 15, 2003; *The Welch News*.	Mr. B.G. Smith, McDowell County Administrator, 90 Wyoming Street, Suite 109, Welch, West Virginia 25801.	April 16, 2003	540114 B
Wisconsin:					
Chippewa	Unincorporated Areas.	January 8, 2003; January 15, 2003; *The Chippewa Herald*.	Mr. Michael Murphy, Chairman of the Chippewa County Board, 711 North Bridge Street, Chippewa Falls, Wisconsin 54729.	December 30, 2002	555549 C
Lincoln	City of Merrill	November 26, 2002; December 3, 2002; *The Tomahawk Leader*.	The Honorable Douglas Williams, Mayor of the City of Merrill, 1004 East First Street, Merrill, Wisconsin 54452.	November 18, 2002	555565 B
Pierce	Unincorporated Areas.	January 15, 2003; January 22, 2003; *Pierce County Herald*.	Mr. Richard Truax, Pierce County Board Chairman, P.O. Box 128, Ellsworth, Wisconsin 54011.	April 21, 2003	555571 B

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: February 3, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–3336 Filed 2–10–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2878, or (email) *Michael.Grimm@fema.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown

and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, floodplains, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Connecticut:					
Middlesex (FEMA Docket No. D–7531).	City of Middletown ..	September 10, 2002; September 17, 2002; *The Middletown Press*.	The Honorable Domenique S. Thornton, Mayor of the City of Middletown, 245 deKoven Drive, P.O. Box 1300, Middletown, Connecticut 06457.	December 17, 2002	090068 C
Florida:					
Seminole (FEMA Docket No. D–7529).	City of Altamonte Springs.	August 30, 2002; September 6, 2002; *The Orlanda Sentinel*.	Mr. Phillip D. Penland, Manager of the City of Altamonte Springs, 225 Newburyport Avenue, Altamonte Springs, Florida 32701.	December 6, 2002	120290 E
Broward (FEMA Docket No. D–7527).	Unincorporated Areas.	July 8, 2002; July 15, 2002; *Sun-Sentinel*.	Mr. Roger J. Desjarlais, Broward County Administrator, 115 South Andrews Avenue, Room 409, Fort Lauderdale, Florida 33301.	July 1, 2002	125093 F
Charlotte (FEMA Docket No. D–7531).	Unincorporated Areas.	September 19, 2002; September 26, 2002; *Herald Tribune (Charlotte County Edition)* and *Sun Herald*.	Ms. Pamela Brangaccio, Charlotte County Interim Administrator, 18500 Murdock Circle, Port Charlotte, Florida 33948.	September 12, 2002 ...	120061 D
Dade (FEMA Docket No. D–7531).	Unincorporated Areas.	September 13, 2002; September 20, 2002; *The Miami Herald*.	Mr. Steve Shriver, Dade County Manager, 111 N.W. First Street, Suite 910, Miami, Florida 33128.	September 6, 2002	120635 J
Dade (FEMA Docket No. D–7531).	City of Miami	September 10, 2002; September 17, 2002; *The Miami Herald*.	The Honorable Manuel A. Diaz, Mayor of the City of Miami, 3500 Pan American Drive, Miami, Florida 33133.	September 3, 2002	120650 J
Broward (FEMA Docket No. D–7527).	City of Parkland	July 8, 2002; July 15, 2002; *Sun-Sentinel*.	The Honorable Sal Pagliara, Mayor of the City of Parkland, 6600 University Drive, Parkland, Florida 33067.	July 1, 2002	120051 F

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community number
Seminole (FEMA Docket No. D–7529).	Unincorporated Areas.	August 30, 2002; September 6, 2002; *The Orlando Sentinel*.	Mr. Kevin Grace, Manager of Seminole County, Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771.	December 6, 2002	120289 E
Georgia:					
Richmond (FEMA Docket No. D–7531).	City of Augusta	September 5, 2002; September 12, 2002; *The Augusta Chronicle*.	The Honorable Bob Young, Mayor of the City of Augusta, City-County Municipal Building, 530 Greene Street, Augusta, Georgia 30911.	December 12, 2002	130158 E
Catoosa (FEMA Docket No. D–7531).	City of Fort Oglethorpe.	September 4, 2002; September 11, 2002; *Chattanooga Free Press*.	The Honorable Judson L. Burkhart, Mayor of the City of Fort Oglethorpe, P.O. Box 5509, 500 City Hall Drive, Fort Oglethorpe, Georgia 30742.	December 11, 2002	130248 B
Illinois:					
Kane (FEMA Docket No. D–7529).	Village of Sleepy Hollow.	August 9, 2002; August 16, 2002; *The Courier News*.	Mr. Stephen K. Pickett, Village of Sleepy Hollow President, 1 Thorobred Lane, Sleepy Hollow, Illinois 60118.	August 1, 2002	170331
Kane (FEMA Docket No. D–7529).	Village of West Dundee.	August 9, 2002; August 16, 2002; *The Daily Herald*.	Mr. Larry Keller, Village of West Dundee President, 102 South 2nd Street, West Dundee, Illinois 60118..	August 1, 2002	170335
Maine:					
Knox (FEMA Docket No. D–7529).	Town of Camden	August 15, 2002; August 22, 2002; *The Camden Herald*.	Mr. Roger Moody, Manager of the Town of Camden, P.O. Box 1207, Camden, Maine 04843.	July 17, 2002	230074 B
Pennsylvania:					
Bucks (FEMA Docket No. D–7527).	Borough of Richland	August 14, 2002; August 21, 2002; *The Intelligencer*.	Mr. Steven Tamburri, Chairman of the Township of Richland Board of Supervisors, Suite A, 1328 California Road, Quakertown, Pennsylvania 18951.	November 20, 2002	421095 F
Virginia:					
Prince William (FEMA Docket No. D–7527).	Town of Dumfries ...	August 9, 2002; August 16, 2002; *Potomac News*.	The Honorable Melvin Bray, Mayor of the Town of Dumfries, P.O. Box 56, Dumfries, Virginia 22026.	July 31, 2002	510120 D
Independent City (FEMA Docket No. D–7531).	City of Roanoke	September 20, 2002; September 27, 2002; *Roanoke Times*.	The Honorable Ralph K. Smith, Mayor of the City of Roanoke, 215 Church Avenue, S.W., Room 452, Roanoke, Virginia 24011.	September 12, 2002 ...	510130 D
Fauquier (FEMA Docket No. D–7527).	Town of Warrenton	August 15, 2002; August 22, 2002; *Fauquier Citizen*.	Mr. Kenneth L. McLawhon, Warrenton Town Manager, 18 Court Street, Warrenton, Virginia 20186.	July 16, 2002	510057 B
West Virginia:					
Berkeley (FEMA Docket No. D–7531).	Unincorporated Areas.	September 20, 2002; September 27, 2002; *Martinsburg Journal*.	Mr. Howard Strauss, President of Berkeley County, Board of Commissioners, 126 West King Street, Martinsburg, West Virginia 25401.	September 4, 2002	540282 B

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: February 3, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–3335 Filed 2–10–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that

each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2878, or (email) *Michael.Grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
ALABAMA	
Montgomery County (Unincorporated Areas) and City of Montgomery (FEMA Docket No. D–7544)	
City of Montgomery	
Baldwin Slough:	
At the confluence with Catoma Creek	*181
Approximately 600 feet upstream of Vaughn Road	*235
Montgomery County (Unincorporated Areas)	
Catoma Creek:	
Just upstream of Trotman Road	*216
Approximately 12.5 miles upstream of Trotman Road	*247
City of Montgomery, Montgomery County (Unincorporated Areas)	
Catoma Creek Tributary 1:	
At the confluence with Catoma Creek Tributary 1	*216
Approximately 1.5 miles upstream of the confluence with Catoma Creek Tributary 1	*247
City of Montgomery	
Catoma Creek Tributary 1 Branch 1:	
At confluence with Catoma Creek Tributary 1	*206
Approximately 1.7 miles upstream of confluence with Catoma Creek Tributary 1	*223
City of Montgomery	
Catoma Creek Tributary 1 Branch 2:	
At confluence with Catoma Creek Tributary 1	*208
Approximately 1.7 miles upstream of confluence with Catoma Creek Tributary 1	*234
City of Montgomery	
Catoma Creek Tributary 1 Branch 3:	
At confluence with Catoma Creek Tributary 1	*212
Approximately 1.4 miles upstream of the confluence with Catoma Creek Tributary 1	*235
Montgomery County (Unincorporated Areas)	
Dry Creek:	
Approximately 200 feet downstream of Troy Highway	*247
Approximately 0.9 mile upstream of Canty Road	*271
City of Montgomery, Montgomery County (Unincorporated Areas)	
Jenkins Creek:	
Just upstream of CSX Transportation	*208
Approximately 100 feet upstream of Vaughn Road	*222
Montgomery County (Unincorporated Areas)	
Little Catoma Creek:	
Approximately 1.25 miles upstream of Troy Highway	*220
Just upstream of Old Hayneville Road	*268

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
Montgomery County (Unincorporated Areas)	
Little Catoma Creek Tributary 1:	
Approximately 300 feet upstream from the confluence with Little Catoma Creek ...	*220
Approximately 50 feet upstream of Old Pike Road ...	*259
Montgomery County (Unincorporated Areas), City of Montgomery	
Millies Creek:	
Just upstream of CSX Transportation	*215
Approximately 50 feet upstream of Wallahatchie Road	*238
City of Montgomery	
Oliver Creek:	
Approximately 0.8 mile downstream of CSX Transportation	*173
Approximately 100 feet upstream of Interstate Route 85	*237
Montgomery County (Unincorporated Areas)	
Maps available for inspection at the Montgomery County Engineering Department, 3152 Rolling Road Circle, Montgomery, Alabama.	
City of Montgomery	
Maps available for inspection at the Montgomery City Hall, 103 North Perry, Montgomery, Alabama.	
VIRGINIA	
Shenandoah County and Incorporated Areas (FEMA Docket No. D–7540)	
Shenandoah County (Unincorporated Areas), Town of Strasburg, Town of Mount Jackson, Town of New Market	
North Fork Shenandoah River:	
At the downstream county boundary	*517
Approximately 4,000 feet upstream of State Route 953	*952
Shenandoah County (Unincorporated Areas), Town of Woodstock	
Spring Hollow:	
At the confluence with North Fork Shenandoah River	*676
Approximately 1,500 feet upstream of State Route 763	*930
Shenandoah County (Unincorporated Areas), Town of Edinburg	
Stony Creek:	
At the confluence with North Fork Shenandoah River	*781
Approximately 400 feet downstream of State Route 760	*781
Shenandoah County (Unincorporated Areas)	
Maps available for inspection at the Shenandoah County Planning and Zoning Department, 600 North Main Street, Suite 107, Woodstock, Virginia.	
Town of Edinburg	
Maps available for inspection at the Edinburg Town Office, 101 Town Hall Avenue, Edinburg, Virginia.	
Town of Mount Jackson	
Maps available for inspection at the Mount Jackson Town Hall, 5945 Main Street, Mount Jackson, Virginia.	
Town of New Market	
Maps available for inspection at the New Market Town Office, 9418 John Sevier Road, New Market, Virginia.	
Town of Strasburg	
Maps available for inspection at the Strasburg Town Office, 174 East King Street, Strasburg, Virginia.	
Town of Woodstock	
Maps available for inspection at the Woodstock Municipal Building, 135 North Main Street, Woodstock, Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: February 3, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–3332 Filed 2–10–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2878, or (email) *Michael.Grimm@fema.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below.

Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
NEW JERSEY	
Estell Manor (City), Atlantic County (FEMA Docket No. D–7538)	
Tuckahoe River:	
Approximately 0.7 mile upstream of Cumberland Avenue	*56
At State Route 49	*22
Great Egg Harbor:	
At the confluence of Great Egg Harbor River and South River	*9
Maps available for inspection at the Estell Manor City Municipal Building, 148 Cumberland Avenue, Estell Manor, New Jersey.	
NEW YORK	
Saranac (Town), Clinton County (FEMA Docket No. D–7538)	
Saranac River:	
Approximately 1,050 feet downstream of Duquette Road	*736
Approximately 400 feet upstream of confluence of North Branch Saranac River	*1,111
Approximately 600 feet southwest of the intersection of Cringle Road and State Route 3 and north of State Route 3	*739
Maps available for inspection at the Saranac Town Hall, 3662 Route 3, Saranac, New York.	
TENNESSEE	
Brentwood (City), Williamson County	
Beech Creek:	
Approximately 500 feet downstream of the Private Drive	*637
Approximately 1,960 feet upstream of Murray Lane	*666
Owl Creek:	
Approximately 900 feet downstream of the county boundary	*554
Approximately 2,600 feet upstream of Ragsdale Road	*652
Mill Creek:	
Approximately 0.14 mile downstream of Concord Road	*555
Approximately 900 feet upstream of Concord Road	*557
Maps available for inspection at the Brentwood City Hall, 5211 Maryland Way, Brentwood, Tennessee.	
Rockwood (City), Roane County (FEMA Docket No. D–7542)	
North Fork Black Creek:	
Approximately 300 feet downstream of South Front Avenue	*872
Approximately 200 feet upstream of South Lenoir Avenue	*882
East Fork Black Creek:	
At the upstream side of West Wheeler Street	*880
Approximately 380 feet upstream of North Front Avenue	*912
Black Creek Side Channel:	
At the confluence with Black Creek	*866
At the divergence from North Fork Black Creek	*872
Black Creek:	
Approximately 1,580 feet upstream of U.S. Route 70	*854
Approximately 220 feet upstream of West Rockwood Street	*878
Middle Fork Black Creek:	
Approximately 140 feet downstream of North Chamberlain Avenue	*878
Approximately 2,420 feet upstream of Strang Street	*924
Maps available for inspection at the City Hall Building, 110 North Chamberlain Avenue, Rockwood, Tennessee 37854.	
WISCONSIN	
Belleville (Village), Dane County (FEMA Docket No. D–7504)	
Sugar River:	
At Remy Road	*855
At a point approximately 1.2 miles upstream of Belleville Dam	*864
Maps available for inspection at the Belleville Village Hall, 24 West Main Street, Belleville, Wisconsin.	
Cross Plains (Village), Dane County (FEMA Docket No. D–7504)	
Enchanted Valley Creek:	
At the confluence with Black Earth Creek	*873
Approximately 50 feet downstream of Military Road	*903
Maps available for inspection at the Cross Plains Village Hall, 2417 Brewery Road, Cross Plains, Wisconsin.	
Deerfield (Village), Dane County (FEMA Docket No. D–7504)	
Unnamed Tributary from Mud Creek:	
Approximately 1.1 mile from confluence with Mud Creek	*850
Maps available for inspection at the Deerfield Village Hall, 4 North Main Street, Deerfield, Wisconsin.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)
Markesan (City), Green Lake County (FEMA Docket No. D–7538)	
Grand River:	
At downstream corporate limits	*841
Approximately 0.6 mile upstream of the confluence of East Tributary	*855
East Tributary:	
At confluence with Grand River	*851
Approximately 0.6 mile upstream of John Street	*854
West Tributary:	
At confluence with Grand River	*845
Approximately 0.5 mile upstream of Margaret Street	*871
Maps available for inspection at the Markesan City Hall, 150 South Bridge Street, Markesan, Wisconsin.	
McFarland (Village), Dane County (FEMA Docket No. D–7504)	
Upper Mud Lake (formerly known as Lake Waubesa):	
Entire shoreline within the community	*848
Maps available for inspection at the McFarland Village Municipal Center, 5915 Milwaukee Street, McFarland, Wisconsin.	
Middleton (City), Dane County (FEMA Docket No. D–7504)	
Pheasant Branch:	
Approximately 1,500 feet west of the intersection of Airport Road and Laura Lane	*926
Maps available for inspection at the Middleton City Hall, 7426 Hubbard Avenue, Middleton, Wisconsin.	
Shorewood Hills (Village), Dane County (FEMA Docket No. D–7504)	
Lake Mendota:	
Entire shoreline within community	*852
Maps available for inspection at the Shorewood Hills Village Hall, 810 Shorewood Boulevard, Madison, Wisconsin.	
Sun Prairie (City), Dane County (FEMA Docket No. D–7504)	
Koshkonong Creek:	
Approximately 1,300 feet upstream of Bailey Road	*922
Approximately 1.0 mile upstream of South Bird Street	*925
Maps available for inspection at the Sun Prairie City Hall, 300 East Main Street, Sun Prairie, Wisconsin.	
Waunakee (Village), Dane County (FEMA Docket No. D–7504)	
Sixmile Creek:	
Approximately 145 feet west of intersection of State Route 19 and Dorn Drive	*920
Maps available for inspection at the Waunakee Village Hall, 500 West Main Street, Waunakee, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: February 3, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–3331 Filed 2–10–03; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, 98–170; FCC 03–20]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission reconsiders, on its own motion, the definition of ''affiliate'' adopted in the recent report and order and second further notice of proposed rulemaking modifying rules regarding the assessment and recovery of contributions to the Federal universal service mechanisms. Specifically, the Commission concludes that wireless telecommunications providers are affiliated for purposes of making the single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor if one entity directly or indirectly controls or has the power to control another, is directly or indirectly controlled by another, is directly or indirectly controlled by a third party or parties that also controls or has the power to control another, or has an ''identity of interest'' with another contributor. The Commission also clarifies options for the recovery of universal service contribution costs by wireless telecommunications providers that choose to report actual interstate telecommunications revenues based on a company-specific traffic study.

DATES: Effective February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Diane Law Hsu, Acting Deputy Chief, Wireline Competition Bureau, Telecommunications Access Policy Division or Paul Garnett, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order and Order on Reconsideration in CC Docket Nos. 96–45, 98–171, 90–571, 92–237, 99–200, 95–116, and 98–170 ; FCC 03–20, released on January 30, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this Order, we reconsider, on our own motion, the definition of ''affiliate'' adopted in the recent report and order and second further notice of proposed rulemaking modifying rules regarding the assessment and recovery of contributions to the Federal universal service mechanisms. Specifically, we conclude that wireless telecommunications providers are affiliated for purposes of making the single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor if one entity (1) directly or indirectly controls or has the power to control another, (2) is directly or indirectly controlled by another, (3) is directly or indirectly controlled by a third party or parties that also controls or has the power to control another, or (4) has an ''identity of interest'' with another contributor. We also clarify options for the recovery of universal service contribution costs by wireless telecommunications providers that choose to report actual interstate telecommunications revenues based on a company-specific traffic study.

II. Discussion

2. *Definition of Affiliate.* In this Order, we reconsider, on our own motion, the definition of affiliate adopted in the *Universal Service Contribution Methodology Order,* 67 FR 79525, December 30, 2002, for purposes of

wireless providers making a single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor. We have become aware that adoption of an affiliate definition in this context that deems a ten percent interest as indicative of control would result in companies being required to make the same election merely because they are related through direct or indirect minority ownership interests of more than 10 percent. We understand that such cross-ownership is common in the wireless telecommunications industry. For example, several major national wireless telecommunications providers may be ''affiliated'' for purposes of the definition adopted as a result of greater than ten percent ownership interests in certain other wireless telecommunications providers. In short, the definition adopted in the *Universal Service Contribution Methodology Order* may force competing wireless telecommunications providers that are not otherwise under common control to adopt common universal service revenue reporting policies.

3. We conclude that revising the definition of affiliate in this proceeding is necessary to achieve the goals of consistency, equity, and fairness in reporting revenues for purposes of supporting universal service. Entities that are not under common control may have different billing and administrative systems and, consequently, may have legitimate reasons to make different revenue reporting elections. The Commission previously adopted rules in the wireless auction context in order to evaluate affiliations for purposes of determining eligibility for designated entity status. We conclude a similar approach would be reasonable for purposes of revenue reporting for universal service. We, therefore, reconsider on our own motion the definition of ''affiliate'' adopted in the *Universal Service Contribution Methodology Order.* We now conclude, consistent with § 1.2110(c)(5) of the Commission's rules, that wireless telecommunications providers are affiliated for purposes of making the single election whether to report actual interstate telecommunications revenues or use the applicable interim wireless safe harbor for universal service contribution purposes if one entity (1) directly or indirectly controls or has the power to control another, (2) is directly or indirectly controlled by another, (3) is directly or indirectly controlled by a third party or parties that also controls or has the power to control another, or (4) has an ''identity of interest'' with another contributor.

4. *CMRS Actual Interstate Revenues.* We note that some parties have suggested two different readings of the Commission's universal service contribution cost recovery limitations for wireless telecommunications providers that choose to report their actual interstate telecommunications revenues based on a company-specific traffic study. Specifically, AT&T and WorldCom read the requirement that telecommunications carriers cannot mark up the universal service line item above the relevant contribution factor to mean that wireless carriers that do not utilize the interim safe harbors must conduct traffic studies on a customer-by-customer basis when recovering contribution costs through a line item. CTIA, on the other hand, reads this requirement to allow wireless carriers that report revenues based on a company-specific traffic study to use the same company-specific percentage to determine interstate revenues to compute contribution recovery line items.

5. We disagree with AT&T and WorldCom's reading of the requirement. For wireless providers that choose to report their actual interstate telecommunications revenues based on a company-specific traffic study, the interstate telecommunications portion of each customer's bill would equal the company-specific percentage based on its traffic study times the total telecommunications charges on the bill. Accordingly, if such providers choose to recover their contributions through a line item, their line items must not exceed the interstate telecommunications portion of each customer's bill, as described above, times the contribution factor. Just as the Commission did not eliminate the option of reporting actual interstate telecommunications revenues either through a company-specific traffic study or some other means, the Commission did not intend to preclude wireless telecommunications providers from continuing to recover contribution costs in a manner that is consistent with the way in which companies report revenues to USAC. We therefore disagree with AT&T and WorldCom that the recovery limitations adopted in the *Universal Service Contribution Order* should be read so narrowly as to require CMRS providers to conduct traffic studies on a customer-by-customer basis to calculate contribution recovery line items.

III. Ordering Clause

6. Accordingly, it is ordered, pursuant to sections 1–4, 201–202, 254, and 405 of the Communications Act of 1934, as amended, and § 1.108 of the Commission's rules, this Order and Order on Reconsideration is adopted.

7. Pursuant to section 553(d)(3) of the Administrative Procedure Act, this Order and Order on reconsideration shall become effective upon publication in the **Federal Register**.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3337 Filed 2–10–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 020724175–3022–02; I.D. 062602E]

RIN 0648–AP71

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 69 to Revise American Fisheries Act Inshore Cooperative Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 69 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutians Area (FMP). This final rule will allow an American Fisheries Act (AFA) inshore cooperative to contract with a non-member vessel to harvest a portion of the cooperative's pollock allocation. The North Pacific Fishery Management Council (Council) developed Amendment 69 to provide greater flexibility to inshore catcher vessel cooperatives to arrange for the harvest of their pollock allocation, and to address potential emergency situations, such as vessel breakdowns, that would prevent a cooperative from harvesting its entire allocation. This action is designed to be consistent with the environmental and socioeconomic objectives of the AFA, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: This regulation becomes effective on March 13, 2003, except for

§ 679.62(c), which will become effective after Paperwork Reduction Act approval has been received from the Office of Management and Budget and a **Federal Register** notice has been published to make it effective.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for Amendment 69 may be obtained from Lori Durall, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, 907–586–7247.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7650, or *kent.lind@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) under the FMP. The Council prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and the AFA (Div. C, Title II, Public Law No. 105–277, 112 Stat. 2681 (1998)). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The AFA established a limited access program for the inshore sector of the BSAI pollock fishery that is based on the formation of fishery cooperatives around each inshore pollock processor. Regulations governing the formation and operation of inshore catcher vessel cooperatives are set out at 50 CFR 679.62 and are summarized in the final rule to implement AFA-related Amendments 61/61/13/8 (67 FR 79692, December 30, 2002).

Purpose and Need for Amendment 69

Several existing regulations and administrative limitations implementing the American Fisheries Act prevent inshore cooperatives from contracting with non-member vessels to harvest a portion of the cooperative's BSAI pollock allocation. First, NMFS recordkeeping and reporting requirements specify that all landings from the BSAI directed pollock fishery that are made by the member vessels of a cooperative must accrue against that cooperative's annual allocation. The NMFS database in its present form automatically assigns a single cooperative code to each AFA catcher vessel (the code representing the cooperative of which the vessel is a member) and, therefore, precludes a vessel from reporting landings using any different cooperative code during a fishing year. Second, regulations at 50 CFR 679.7(k)(5)(i) prohibit a catcher vessel listed on an AFA inshore cooperative permit to harvest pollock in excess of the cooperative's allocation. This prohibition prevented the member vessels in one cooperative from contracting to harvest a portion of the allocation of another cooperative.

These restrictions, which have the effect of preventing inshore cooperatives from contracting with non-member vessels, were required by paragraphs 210(b)(1)(B) and 210(b)(5) of the AFA.

Amendment 69 has three objectives: (1) Increase efficiency and provide catcher vessel owners with a more functional market for leasing of individual pollock allocations, (2) ensure that an inshore cooperative is able to harvest its entire allocation in the event of vessel breakdowns or other unanticipated emergencies, and (3) improve safety by providing greater flexibility for larger catcher vessels to harvest cooperative allocations during hazardous weather in winter months and when Steller sea lion conservation measures require that fishing be done further offshore.

With respect to the first objective, the AFA allows a cooperative member to lease pollock quota only to those vessel owners who are members of the same cooperative. In cooperatives where a substantial number of the vessels are owned or controlled by the associated processor, owners of independent catcher vessels may have limited opportunities to lease quota to other independent vessel owners in the same cooperative. The problem could become even more acute at certain times of the year when only plant-owned vessels are operating. In this instance, an independent catcher vessel owner could have only one potential customer willing to lease his quota and, therefore, may be in a weak bargaining position. This independent catcher vessel owner likely would benefit from a broader market for his pollock quota. Efficiency could improve if the vessel that is being contracted to harvest the pollock has lower operating costs than the vessel initially granted use rights to the pollock by the cooperative, depending upon the cost and terms of the lease contract.

With respect to the second objective, under existing regulations, if one or more vessels in a cooperative breaks down or is otherwise out of commission, and the other vessels in the cooperative are already operating at full capacity, a catcher vessel owner could be unable to contract with a replacement vessel to harvest his portion of the cooperative's pollock allocation. An unexpected emergency such as a dockside fire or accidents that disable or destroy several member vessels of a cooperative at the same time could result in the cooperative being unable to harvest a large portion of its annual allocation. This final rule gives cooperatives the means to deal with such emergency situations and facilitate their ability to harvest their entire annual allocations.

With respect to the third objective, safety may be improved if the owners of smaller catcher vessels have greater flexibility to enter into contracts with larger (presumably safer) vessels to harvest the smaller vessel's allocation during the more hazardous weather conditions common during winter months and when Steller sea lion protection measures require that fishing be conducted further offshore.

Council Authority to Supersede the AFA

Subsection 213(c) of the AFA authorizes the Council to recommend management measures to supersede certain provisions of the AFA. Any measure recommended by the Council, and approved by the Secretary of Commerce (Secretary), that supersedes a specific provision of the AFA is implemented in accordance with the Magnuson-Stevens Act. In developing Amendment 69, the Council determined that all three objectives for Amendment 69 meet the criteria established in paragraph 213(c)(1) of the AFA, which states that the Council may recommend measures that supersede the AFA ''to mitigate adverse effects . . . on owners of fewer than three vessels in the directed pollock fishery...''.

The Council, in interpreting paragraph 213(c)(1), understood the term ''owners of fewer than three vessels'' to reference independent vessel owners who own two or less vessels in the directed pollock fishery. These are the vessel owners who this rule is intended to benefit as is described in the discussion of the three objectives above.

Elements of the Final Rule

This final rule contains the following requirements for inshore cooperatives that wish to contract with non-member vessels to harvest a portion of a cooperative's annual BSAI pollock allocation.

Application process. A cooperative that wishes to contract with a vessel that is a member of another inshore cooperative is required to complete and submit to NMFS a vessel contract form. The form is available from NMFS and requires that the cooperative identify the contract vessel, the contract vessel's home cooperative, and describe how pollock landings by the contract vessel are to be assigned between cooperatives.

Cooperatives are allowed to contract with a non-member vessel to fish for the cooperative for a certain period of time, or to harvest a certain tonnage of pollock. The contract form also must indicate how any harvest overages by the contract vessel will be treated. A vessel contract form is not valid unless it is signed by the cooperative's designated representative, the contracted vessel owner, and the designated representative for the vessel's home cooperative. These signatures are necessary to ensure that all affected parties are in agreement as to the terms of the contract and to avoid any disputes about how a contract vessel's catch is to be attributed.

Fishing for multiple cooperatives. A vessel owner may enter into simultaneous contracts with more than one cooperative. This may occur, for example, at the end of a fishing season when several cooperatives have very small remaining allocations and it is more cost-effective for a single vessel to conduct ''mop up'' operations for several cooperatives at one time than for each individual cooperative to send a separate vessel to harvest the small remaining tonnages of pollock. If a vessel owner wishes to enter into contracts with more than one cooperative at the same time, then all the affected cooperatives are required to submit their contract applications together, and the contract applications must specify how the contracted vessel's harvest and any overages are to be assigned among the various cooperatives.

Recordkeeping and reporting requirements. Inshore processors are currently required to report in their shoreside electronic delivery reports the name and co-op code of each vessel that makes a delivery to that processor. Under this final rule, this requirement does not change. However, each vessel operator must correctly identify for the processor, the co-op code that should be assigned to each delivery. In the event that a vessel is making a single delivery on behalf of more than one cooperative, the processor must submit a separate delivery report for each cooperative that identifies the tonnage of pollock that is assigned to each cooperative. Cooperatives must report any contracted landings by non-member vessels on their weekly reports to NMFS. Cooperatives also must provide a summary of all contracted fishing by non-member vessels in their preliminary and final annual reports.

Liability. For the purpose of liability, a non-member vessel under contract to a cooperative is considered to be a member of the cooperative for the duration of the terms of the contract. This means that the members of the cooperative may be held jointly and severally liable under § 679.61 for certain fishing violations made by the operator of the contracted vessel.

Effects of contract fishing on future qualification for membership. Under this final rule, BSAI pollock landings made by a vessel while under contract to another cooperative would not be used to determine the vessel's qualification for future membership in a cooperative. Only landings attributed to the vessel's home cooperative will be used to determine which cooperative the vessel is eligible to join in a future year. The purpose of this measure is to prevent contracted fishing activity from affecting which cooperative a vessel is eligible to join in the subsequent fishing year.

Response to Comments

A Notice of Availability of Amendment 69 was published in the **Federal Register** on July 5, 2002 (67 FR 44794), inviting comments on the FMP amendment through September 3, 2002. NMFS received two comment letters on Amendment 69, both of which supported approval of the Amendment. On October 3, 2002, after consideration of the comments received, the Secretary approve Amendment 69 in its entirety.

A proposed rule to implement Amendment 69 was published in the **Federal Register** on August 23, 2002 (67 FR 54610), with comments invited through October 7, 2002. NMFS received two comment letters on the proposed rule which are summarized in the following three comments:

Comment 1: The commenters believe it is important to note that Amendment 69 would actually relax regulatory requirements on participants in the fisheries to allow more operational flexibility. This flexibility is very important to independently-owned catcher vessels, which in many cases do not have adequate options in their own cooperatives. Amendment 69 would provide that flexibility.

Response: The Final Regulatory Flexibility Analysis prepared for Amendment 69 came to the same conclusion.

Comment 2: The commenters believe it is important to note that this amendment has been supported by substantially all affected harvesters and processors throughout the Council process. Furthermore, throughout the entire Council process no opposition to this action arose.

Response: NMFS has not received any indication of opposition to this action.

Comment 3: The commenters noted that two major goals of the AFA were the rationalization and de-capitalization of the Bering Sea harvesting fleet. Amendment 69 will further both goals by providing inshore cooperatives with necessary flexibility and the ability to employ the optimum number and type of harvesting vessels.

Response. Comment noted.

Changes from the Proposed Rule

The structure and numbering of the paragraphs in this final rule were revised from the supplemental proposed rule published on August 23, 2002 (67 FR 54610). These changes were necessary to ensure that the paragraph numbering in this final rule is consistent with the final rule implementing AFA-related Amendments 61/61/13/8 (67 FR 79692, December 30, 2002), which this final rule amends. No other changes were made from the supplemental proposed rule.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 69 is necessary for the conservation and management of the BSAI pollock fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which describes the impact this final rule may have on small entities. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and its findings. A copy of the FRFA is available from NMFS (see **ADDRESSES**). No comments on the IRFA were received during the comment period that would result in findings that differ from those previously described. A description of the impacts of this action on small entities was provided in the proposed rule (67 FR 54610, August 23, 2002). In summary, this final rule modifies an existing form to allow a cooperative to identify a non-member vessel with which the cooperative intends to contract. None of the cooperatives impacted by this final rule are small entities. NMFS is aware of no existing relevant Federal rules which duplicate, overlap, or conflict with this final rule.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under Control Number 0648–0401.

Public reporting burden for recordkeeping and reporting under AFA is as follows: Five minutes to submit a copy of the cooperative contract; 5 minutes to complete the catcher vessel cooperative pollock catch report; 8 hours to complete the cooperative preliminary report; and 8 hours to complete the annual written cooperative final report.

This rule also contains a proposed revision to this information collection that has been submitted to OMB for approval. The revision would require inshore cooperatives that wish to contract with a non-member vessel to harvest a portion of the cooperatives' annual pollock allocation to submit a completed contract fishing application to the Alaska Region, NMFS. Public reporting burden for this collection is estimated to be 30 minutes to complete the application and submit it to NMFS. The number of annual respondents is not expected to exceed 8, which is the maximum number of inshore cooperatives, as provided by the AFA.

Public comment is sought regarding the revision: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES** above) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: February 5, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is revised to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57.

2. In § 679.4, paragraph (l)(6)(ii)(D)(*2*)(*iii*) is added to read as follows.

§ 679.4 Permits.

* * * * *

(l) * * *

(6) * * *

(ii) * * *

(D) * * *

(*2*) * * *

(*iii) Harvests under contract to a cooperative.* Any landings made by a vessel operating under contract to an inshore cooperative in which it was not a member will not be used to determine eligibility under paragraph (l)(6)(ii)(D)(*2*).

* * * * *

3. In § 679.7, paragraph (k)(5)(i) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(k) * * *

(5) * * * (i) *Overages by vessel.* Use an AFA catcher vessel listed on an AFA inshore cooperative fishing permit, or under contract to a fishery cooperative under § 679.62(c), to harvest non-CDQ BSAI pollock in excess of the fishery cooperative's annual allocation of pollock specified under § 679.62.

* * * * *

4. In § 679.61, paragraph (a) is revised to read as follows:

§ 679.61 Formation and operation of fishery cooperatives.

(a) *Who is liable for violations by a fishery cooperative and cooperative members*? A fishery cooperative must comply with the provisions of this section. The owners and operators of vessels that are members of a fishery cooperative, including vessels under contract to a cooperative, are responsible for ensuring that the fishery cooperative complies with the directed fishing, sideboard closures, PSC limits and other allocations and restrictions that are applicable to the fishery cooperative. The owners and operators of vessels that are members of a fishery cooperative, including vessels under contract to a cooperative, are responsible for ensuring that all fishery cooperative members comply with the directed fishing, sideboard closures, PSC limits and other allocations and restrictions that are applicable to the fishery cooperative.

* * * * *

5. In § 679.62, paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 679.62 Inshore sector cooperative allocation program.

* * * * *

(b) *What are the restrictions on fishing under a cooperative fishing permit*? A cooperative that receives a cooperative fishing permit under § 679.4(l)(6) must comply with all of the fishing restrictions set out in this subpart. The owners and operators of all the member vessels that are named on an inshore cooperative fishing permit and the owners and operators of any vessels under contract to the cooperative under paragraph (c) of this section are jointly and severally responsible for compliance with all of the requirements of a cooperative fishing permit pursuant to § 679.4(l)(6).

(1) *What vessels are eligible to fish under an inshore cooperative fishing permit*? Only catcher vessels listed on a cooperative's AFA inshore cooperative fishing permit or vessels under contract to the cooperative under paragraph (c) of this section are permitted to harvest any portion of an inshore cooperative's annual pollock allocation.

(2) *What harvests accrue against an inshore cooperative's annual pollock allocation*? The following catches will accrue against a cooperative's annual pollock allocation regardless of whether the pollock was retained or discarded:

(i) *Member vessels.* All pollock caught by a member vessel while engaged in directed fishing for pollock in the BSAI by a member vessel unless the vessel is under contract to another cooperative and the pollock is assigned to another cooperative.

(ii) *Contract vessels.* All pollock contracted for harvest and caught by a vessel under contract to the cooperative under paragraph (c) of this section while the vessel was engaged in directed fishing for pollock in the BSAI.

(3) *How must cooperative harvests be reported to NMFS*? Each inshore pollock cooperative must report its BSAI pollock harvest to NMFS on a weekly basis according to the recordkeeping and reporting requirements set out at § 679.5(o).

(c) *Contract fishing by non-member vessels.* A cooperative that wishes to contract with a non-member vessel to harvest a portion of the cooperative's annual pollock allocation must comply with the following procedures.

(1) *How does a cooperative contract with a non-member vessel*? A cooperative that wishes to contract with a non-member vessel must submit a completed contract fishing application to the Alaska Region, NMFS, in accordance with the contract fishing application instructions.

(2) *What information must be included on a contract fishing application*? The following information must be included on a contract fishing application:

(i) *Co-op name(s)*. The names of the cooperative or cooperatives that wish to contract with a non-member vessel.

(ii) *Designated representative(s)*. The names and signatures of the designated representatives for the cooperatives that wish to contract with a non-member vessel and the vessel's home cooperative.

(iii) *Vessel name*. The name and AFA permit number of the contracted vessel.

(iv) *Vessel owner*. The name and signature of the owner of the contracted vessel.

(v) *Harvest schedule*. A completed harvest schedule showing how all catch and any overages by the contracted vessel will be allocated between the contracting cooperative (or cooperatives) and the contract vessel's home cooperative. In the event that multiple cooperatives are jointly contracting with a non-member vessel, the harvest schedule must clearly specify how all catch and any overages will be allocated among the various cooperatives.

(3) *What vessels are eligible to conduct contract fishing on behalf of an inshore cooperative*? Only AFA catcher vessels with an inshore fishing endorsement that are members of an inshore cooperative may conduct contract fishing on behalf of another inshore cooperative.

(4) *Who must be informed*? A cooperative that has contracted with a non-member vessel to harvest a portion of its inshore pollock allocation must inform any AFA inshore processors to whom the vessel will deliver pollock while under contract to the cooperative prior to the start of fishing under the contract.

(5) *How must contract fishing be reported to NMFS*? An AFA inshore processor that receives pollock harvested by a vessel under contract to a cooperative must report the delivery to NMFS on the electronic delivery report by using the co-op code for the contracting cooperative rather than the co-op code of the vessel's home cooperative.

[FR Doc. 03–3379 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 28
Tuesday, February 11, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–239–FOR]

Kentucky Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: We are announcing receipt of a proposed amendment to the Kentucky abandoned mine land reclamation plan (Kentucky plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposes to revise the Kentucky plan in its entirety to be consistent with the corresponding Federal regulations and SMCRA.

This document gives the times and locations that the Kentucky plan and the amendment to that plan are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t. March 13, 2003. If requested, we will hold a public hearing on the amendment on March 10, 2003. We will accept requests to speak at the hearing until 4 p.m., e.s.t. on February 26, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to William J. Kovacic, Director, Lexington Field Office, at the address listed below.

You may review copies of the Kentucky plan, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260–8400. E-mail: *bkovacic@osmre.gov.*

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400. *Internet: bkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Plan
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Kentucky Plan

The abandoned mine land (AML) reclamation program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary of the Interior approved the Kentucky plan on May 18, 1982. You can find background information on the Kentucky plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the May 18, 1982, **Federal Register** (47 FR 21435). You can find later actions concerning the Kentucky plan and amendments to the plan at 30 CFR 917.20 and 917.21.

II. Description of the Proposed Amendment

By letter dated April 29, 2002 (Administrative Record No. K–70), Kentucky sent us a proposed amendment to its plan under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky submitted the amendment to propose comprehensive changes to the plan. The formal amendment was preceded by two informal submissions in September 1997, and March 16, 2000 (Administrative Record No. K–67). OSM reviewed the informal submissions and reported findings to Kentucky on March 30, 2001 (Administrative Record No. K–69). It should be noted that Kentucky's formal submission on April 29, 2002, did not identify the specific changes being proposed. We subsequently reviewed the 635 page amendment to determine what revisions were made from the original plan. We completed our review on December 19, 2002. Due to the voluminous nature of the submission, we identified only the major changes in this notice or those that may otherwise be of interest to the public. Any revisions that are not listed concern nonsubstantive wording, organizational, or editorial changes. The full text of the amendment is available for your inspection at the locations listed above under **ADDRESSES.** Kentucky proposes to amend the following sections of the plan. Page numbers pertain to the April 29, 2002, submission.

Acquisition, Management, and Disposal of Lands (p. 6–9): the subtitle ''Management of Acquired Lands'' has been added.

Organization (p. 10–17): the subtitle ''Environmental Scientist Principal'' has been added.

Coordination with RAMP [Rural Abandoned Mine Land Program], Indian, and Other Reclamation Plans (p. xvi): ''Natural Resources Conservation Service'' has been added to clarify the name change from ''Soil Conservation Service.'' This change is reflected throughout the plan.

Maps of Eligible Lands and Waters (p. xix): the reference to 30 CFR 884.13(f)(1) has been changed to 30 CFR 884.13(e)(1).

Problems Occurring on AML Sites (p. xx): the reference to 30 CFR 884.13(f)(2) has been changed to 30 CFR 884.13(e)(2).

Relationship to Existing and Planned Land Uses (p. xx): the reference to 30 CFR 884.13(f)(3) has been changed to 30 CFR 884.13(e)(3).

Social, Economic, and Environmental Conditions (p. xx): the reference to 30 CFR 884.13(f)(5) has been changed to 30 CFR 884.13(f)(1), (2), and (3). A reference to Section 19 of the AML Plan has been added after the requirement of a general description of endangered and threatened plants, fish and wildlife, and their habitats.

Objectives (pp. 3–1, 3–2): subsections (g), (h), (i), pertaining to noncoal mining, and (j), pertaining to construction of public facilities in communities impacted by coal development, have been deleted. Subsection (f) has been revised to reflect the rules contained in 30 CFR 875.12, pertaining to eligible lands affected by noncoal mining. The last paragraph of the section has been revised to address lower priority sites. This section has also been revised to prohibit the use of AML monies for reclamation of sites designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 and the Comprehensive Environmental Response Compensation and Liability Act of 1980.

Priority I and II Sites (p. 3–2): the heading has been revised to include priority II sites.

Priority III Sites (p. 3–4): this section has been revised to clarify that problems designated as priority I or II sites may also qualify as priority III problems.

Environmental Goals (p.3–5): this section was added. It states that the Commonwealth of Kentucky (Commonwealth) resources to be protected or enhanced through AML reclamation include, but are not limited to, important wildlife habitats, endangered or threatened plants and animals or their critical habitats, natural areas, wild and scenic rivers, wetlands, floodplains, soil and water, recreational resources, and agricultural productivity.

Phase II Inventory (p.3–6): references to the Abandoned Mine Land Inventory System, and the requirements of 30 CFR 886.23(b), pertaining to reporting of completed AML projects to OSM, have been added.

Small Operator Goals (pp. 3–6 to 3–8): this section has been revised to reference the authorizing statute at Kentucky Revised Statutes (KRS) 350.450. Also, it is noted that small operators are now defined as those who are anticipated to mine less than 300,000 tons of coal per year. The principal goal articulated in this section is to maximize the participation of small operators in the bidding for AML reclamation projects that require some incidental coal removal.

Marketable Mineral Recovery (pp. 3–8, 3–9): the next to last paragraph of this section has been revised to allow all contractors, rather than just small operators, to participate in the bidding for AML projects that involve incidental coal removal, although small operators will still receive preference. The change was made because small operators may occasionally lack the expertise, equipment, access, etc., to perform the needed work.

Bond Forfeiture Projects (p. 3–9): the heading has been changed from ''Supplementation of Eligible Bond Forfeiture Sites'' to ''Bond Forfeiture Projects.'' The section was further revised by deleting all but the first paragraph, and by adding a paragraph that states that it is the policy of the Kentucky Division of Abandoned Mine Lands (DAML) that only eligible bond forfeiture sites are covered by the AML plan and that bond forfeiture sites must meet all priority and grant submission requirements that all other AML problem sites meet.

Water Supply Projects (p. 3–10): a new section has been added to address the requirements at section 403(b)(1) of SMCRA, which authorizes States and Tribes to use up to 30 percent of their annual AML grants to fund projects for water supply facilities in areas that have suffered coal mining related impacts to drinking water supplies.

Project Selection (pp. 4–8 to 4–11): the reference to ''supplemental bond forfeiture reclamation'' has been deleted. This section has also been revised to reflect the decentralization of the project selection process and the process by which grant application elements are prepared for each project.

Coordination with RAMP, Indian, and Other Reclamation Programs (pp. 5–1 to 5–4): all references to the ''Soil Conservation Service'' and its acronym, ''SCS'', were replaced with references to the ''Natural Resources Conservation Service'' or its acronym, ''NRCS.'' On page 5–1, second paragraph, second sentence, the phrase ''30 CFR 884.13(f)(5)(v), Flora and Fauna of the Coalfields,'' was deleted and replaced with the phrase ''30 CFR 884.13(f)(3), Endangered and threatened plant, fish and wildlife and their habitat.'' This change was made because the Federal regulation at 30 CFR 884.13(f)(5)(v) has been repealed.

Lands for Permanent Facilities (p. 6–1): this section has been revised to incorporate the language at KRS 350.570(3), which authorizes the Commonwealth to acquire any land adversely affected by past coal mining practices, if acquisition is necessary for successful reclamation.

Acquisition of Real Property by Donation (p.6–3): subdivision 2(e), which requires itemizations of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered, and subdivision 2(f), which states that a deed of conveyance shall be executed, acknowledged and recorded in the name of the Commonwealth after acceptance of an offer, are being deleted.

Step-by-Step Procedure for Land Acquisition (pp. 6–4 through 6–9): names of departments and titles of certain departmental officials have been updated.

Management of Acquired Lands (p. 6–9): a new section has been added to comply with the requirements at 30 CFR 884.13(c)(4), which requires a description of policies and procedures regarding land acquisition, management and disposal.

Disposition of Reclaimed Lands (p. 6–10): this section has been revised to require that the appraised value of a property be stated in the notice.

Reclamation on Private Lands (pp. 7–4 to 7–6): (1) Levy of Lien: this section has been revised to require that the landowner be provided a statement of the increase in market value, an itemized statement of reclamation expenses, and notice that a lien will or will not be filed in accordance with 30 CFR 882.13. (2) Satisfaction of Liens: the reference to ''State Abandoned Mine Reclamation Fund'' is changed to ''Abandoned Mine Reclamation Fund,'' and Appendix 7–A and Attachment 7–1 have been deleted.

Rights of Entry (pp. 8–7 and 8–18): the reference to ''Division of Abandoned Lands (DAL)'' has been changed here and throughout the document to ''Division of Abandoned Mine Lands (DAML).''

Personnel Staffing Policies (pp. 11–1 and 11–3): compliance with ''Title VII of the Civil Rights Act of 1964 (PL 88–352)'' has been added.

Purchasing and Procurement Systems (pp. 12–1, 12–4, and 12–6): page 12–1, paragraph 6, is being revised by deleting the reference to Public Law 95–87 (SMCRA) and adding references to Chapter 3 of the AML Plan, pertaining to Small Operator Goals, and to 30 CFR 884.13(c)(1). The subsection pertaining to purchase requisitions is being revised to reflect the current procedure for reviewing and approving requisitions. Specifically, three new paragraphs are added to the beginning of the Purchase Requisition section on page 12–4. These new paragraphs state that project plans are selectively reviewed and revised, if

necessary, by the staff of the Commissioner of the Department for Surface Mining Reclamation and Enforcement (DSMRE) and, if approved are then returned to the DAML, where a purchase requisition is prepared for the Director to review and sign. After they are signed, the plans are sent to the Division of Administrative Services, which reviews the purchase requisition for accuracy and form, and to insure that sufficient funds are available. The following revision is added to the first paragraph on page 12–6: ''When an apparent low bidder is identified for any AML reclamation contract, the Division of Abandoned Lands forwards the low bidder's name, federal tax number, social security numbers and other information as required to the Ownership and Control Review section of the Division of Permits of the Kentucky Department of Surface Mining for an Applicant Violator System (AVS) check for permit eligibility, in accordance with 30 CFR 874.16. Before the contract is awarded to the apparent low bidder an AVS confirmation of permit eligibility will be received from the AVS check.'' Also on page 12–6, the fourth sentence of the first paragraph is revised by deleting the statement that the Commonwealth has the right to ''waive all informalities and technicalities of a bid when, in their judgment, the best interest of the Commonwealth of Kentucky may be served.'' A sentence is then added immediately after the revised fourth sentence. The new sentence states that ''[a]ll rejections of bids or waivers will be in accordance with requirements of Office of Management and Budget (OMB) Circular A–102, and applicable State or local law.''

Construction (pp. 12–7 and 12–8): the subsections, ''Monthly Reports for Office of Surface Mining'', ''Final Report for the Office of Surface Mining'' and ''Change Orders,'' have been deleted, as was the phrase, ''and change orders,'' at the end of the first paragraph on page 12–7. The sentence ''guidelines pertaining to change orders will be developed by the Division Director as needed'' has been inserted as the last sentence of the ''Project Inspection'' subsection.

AML Enhancement Rule (p.12–9): the subsection ''AML Enhancement Rule'' has been added. In an effort to promote remining, Kentucky has incorporated OSM's AML Enhancement Rule at 30 CFR 874.17 by reference. The rule provides guidance and procedures for AML programs when considering an AML project as government-financed construction under 30 CFR part 707. This rule applies only if the level of funding will be less than 50 percent of the total cost because of planned coal extraction. It will be implemented in conjunction with Kentucky's approved program regulation at 405 KAR 7:030(2)(1)(c).

Reclamation Agreements (p. 12–10): this new subsection has been added. It authorizes the DSMRE, through the DAML, to enter into Reclamation Agreements (Agreement) with private coal mining permittees for the reclamation of AML sites adjacent to or near active mining permits. The Agreements will be site-specific, and will allow for excess spoil removal from the permit area and placement of the spoil on the AML site. Guidelines for the Agreements are also provided for use by DAML when assessing the need for entering into an Agreement. These guidelines state that the proposed disposal must be AML eligible, must be inventoried by the State AML program and registered on the National Mine Land Inventory System, and must be of priority III or greater priority status. Other guidelines require the State AML program to develop a reclamation cost estimate, and state that the anticipated total cost to be borne by the company must represent a savings to the AML program. Finally, the area must be causing off-site environmental damage, but be an unlikely candidate for reclamation under the regular (*i.e.* AML funded) State AML program.

Accounting Systems (p. 13–1): this section has been revised to update organizational title and office changes.

Maps of Eligible Lands and Waters (p. 15–1): the first paragraph is reworded to better clarify AML eligibility by referencing ''Section 404 'Eligible Lands and Water' and/or 402(g)(4) of Title IV of Public Law 95–87 and/or KRS 350.560''.

Problems Occurring on Abandoned Mine Land Sites (pp. 16–3, 16–5, 16–9 and 16–12): on page 16–3, first paragraph (Environmental Damage), line 3, the phrase ''including adverse impacts on endangered and threatened species'' is added after the phrase ''loss of fish and wildlife habitat.'' Also on page 16–3, in the paragraph entitled ''Surface/Groundwater Contamination,'' the phrase ''including adverse impacts on endangered and threatened species'' is added after the phrase ''aquatic vegetation.'' On page 16–5, at the end of the paragraph entitled ''Erosion,'' the following sentence is added: ''On-site erosion and sediment control techniques will be used wherever practicable and feasible to minimize erosion and retain sediment within the disturbed area or limit the volume of sediment leaving the project site.'' On page 16–5, at the end of the paragraph entitled ''Reduced Fish and Wildlife Habitat,'' the following sentence was added: ''Unvegetated areas may also cause adverse impacts on endangered and threatened species.'' On pages 16–6 and 16–7, a new section, entitled ''Abandoned Highwalls,'' was added. This section enumerates and discusses problems generally associated with abandoned highwalls on AML sites. These problems include, but are not limited to, threats to life, health and safety, reduced wildlife habitat, attractive nuisances for children or hikers, and adverse impact on aesthetic, historical, cultural, or recreational resources. The new section also discussed certain reclamation techniques to correct or abate these problems, including highwall reduction by bench reconstruction, re-establishment of wildlife routes by pulling down highwall sections, or screening or covering the highwall with appropriate plant species to enhance wildlife values and reduce aesthetic degradation. On page 16–9, in the paragraph entitled ''Limitation of loss of habitat,'' the sentence has been changed by adding at the end the phrase ''and runoff from burned areas may impede or prevent utilization of water resources by aquatic life.'' Also, a second sentence is added, which states that ''[s]uch [forest] fires can have adverse impacts on endangered or threatened species.'' On page 16–12, at the end of the paragraph entitled ''Limitation or loss of fish and wildlife habitat,'' the following sentence was added: ''This [limitation or loss of fish and wildlife habitat] problem is especially serious for those endangered or threatened species, such as federally listed bats, which inhabit caves or mine shafts subject to subsidence.''

Relationship to Existing and Planned Land Use (pp. 17 B1, 17–6, and 17–7): this section has been revised to recognize the presence of endangered or threatened species during reclamation and land use planning. A sentence has been added on page 17–6, stating that the Big South Fork National River and Recreation Area has been adversely affected by erosion, sedimentation and acid mine drainage from AML sites. On pages 17–6 and 17–7, it is noted that commercial forest land in the Eastern Kentucky Coalfield includes 670,000 acres of the Daniel Boone National Forest.

Quantities of Land and Water Affected by A.M.L. (p. 18–1): on page 18–1, at the end of the first paragraph, the following two sentences are being added: ''Not all of the acres listed are priority I or II sites. The acreages represent an approximation of the total

mined acres in each coalfield, some of which may be determined to be acceptable in their current state or may require limited efforts to correct remaining problems.''

Socio-Economic and Cultural Profile of the Coalfields (p. 19–23): the first sentence of ''The Redbird Purchase Unit'' paragraph has been changed to make it clear that the unit is not purely a recreational area.

Flora and Fauna of the Coalfields (Chapter 21): numerous changes have been made to include: references to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C., 4321 *et seq.*) and Executive Orders 11988 and 11990 on page 21–77; a requirement to consult with the Kentucky Department of Fish and Wildlife Resources regarding the existence of federally endangered or threatened species during the NEPA review process on page 21–79; the current title of the ''Natural Resources and Environmental Protection Cabinet''; and the incorporation of the NEPA compliance measures into the plan. Thirty-five changes described in the ''Errata of the currently approved AML Plan,'' pages 21–150 to 21–157, have also been incorporated. These changes are composed mostly of additional references to various species of flora and fauna. The currently approved AML Plan, including the Errata changes, can be viewed at the OSM and DSMRE offices referred to above. Two changes of note are found on page 21–78, first paragraph, fourth sentence and on page 21–79, first paragraph, first sentence, wherein references to ''environmental assessment'' were replaced with requirements to comply with NEPA.

Commercially Minable Coal Seams and Projects Methods of Extraction (pp. 22–5, 22–14, 22–24, and 22–26): the Figure 22–1, ''Preliminary Correlation Chart of Coal Beds and Key Beds of the Pennsylvanian Rocks of Eastern Kentucky,'' has been added and the section has been revised to present options in determining remining feasibility, and to eliminate references to Site Score Sheets and matrices to rank AML sites. These references to be deleted are found on page 22–22 of the currently approved AML plan. The sentences inserted to provide options in determining remining feasibility are found on page 22–14 of this amendment, and state that ''Kentucky may use different systems to analyze the consideration for probability for remining. In 1980, the Kentucky Geological Survey developed a system of moderate complexity for ranking probability of remining.'' On page 22–26, pertaining to non-coal minerals, the reference to the Site Score Sheet is being deleted, but the potential for non-coal mineral recovery remains a factor to be considered when ranking AML sites. In that same paragraph, the following four sentences are being added: ''Extraction of these non-coal minerals in the Commonwealth may take place by any of several methods. Petroleum and natural gas are extracted through the sinking of wells. Clay, rock, asphalt, sand and gravel are commonly extracted through methods of surface mining. Limestone, fluorspar, and oil shale, in addition to methods of surface mining, are also commonly extracted through deep mining.''

III. Public Comment Procedures

Under the provisions of 30 CFR 884.15(a), we are requesting comments on whether the amendment satisfies the applicable State reclamation plan approval criteria of 30 CFR 884.14. If we approve the amendment, it will become the Kentucky plan.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Lexington Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: [KY–239–FOR]'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859) 260–8400.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on February 26, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and plan amendments because each plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and plan amendments submitted by a State or Tribe are based solely on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Part 884 of the Federal regulations.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of abandoned mine reclamation programs. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 405(d) of SMCRA requires State abandoned mine reclamation programs to be in compliance with the procedures, guidelines, and requirements established under SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because agency decisions on proposed State and Tribal abandoned mine land reclamation plans and plan amendments are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 7, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–3365 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[ND–046–FOR, Amendment No. XXXII]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposes revisions to its revegetation policy document. North Dakota intends to revise its program to clarify ambiguities and improve operational efficiency.

This document gives the times and locations that the North Dakota program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4

p.m., [m.s.t.] March 13, 2003. If requested, we will hold a public hearing on the amendment on March 10, 2003. We will accept requests to speak until 4 p.m., [m.s.t.] on February 26, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below.

You may review copies of the North Dakota program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement's (OSM) Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East ''B'' Street, Federal Building, Room 2128, Casper, WY 82601–1918, 307/261–6550, *GPadgett@osmre.gov.*

James R. Deutsch, Reclamation Division, 600 E. Boulevard Avenue, Bismarck, ND 5805–0480, 701/328–2400, *jrd@psc.state.nd.us.*

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261–6550. Internet: *GPadgett@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act; and rules and regulations consistent with regulations issued by the Secretary pursuant to [the Act].'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.12, 934.13, 934.15, 934.16, and 934.30.

II. Description of the Proposed Amendment

By letter dated November 20, 2002, North Dakota sent us a proposed amendment to the North Dakota program (Amendment No. XXXII, administrative record No. ND–GG–01) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota's proposed amendment includes the changes made at its own initiative to its revegetation policy document. It proposes to revise its revegetation policy document, ''Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.''

Specifically, North Dakota proposes to change the document's cropland and shelterbelt sections, as well as its sampling design, statistical equations, and methods for measuring productivity. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the North Dakota program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Casper Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS No. ND–046-FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office at 307/261–6555.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., [m.s.t.] on February 26, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 102(a), 30 U.S.C.1202(a), Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that state programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on state, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 6, 2002.

Peter A. Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 03–3366 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 03–010]

RIN 2115–AA97

Security Zones; San Diego Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to expand the geographical boundaries of the permanent security zones at Naval Base San Diego; Naval Submarine Base, San Diego; and Naval Base Coronado, California at the request of the U.S. Navy. Modification and expansion of these security zones is needed to ensure the physical protection of naval vessels moored within each zone by accommodating the Navy's placement of anti-small boat barrier booms within the zones. Entry into these zones is prohibited unless authorized by the Captain of the Port (COTP); Commander, Naval Base San Diego; Commander, Naval Air Force, U.S. Pacific Fleet; Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast; Commander, Naval Base

Coronado; or the Commanding Officer, Naval Station, San Diego.

DATES: Comments and related material must reach the Coast Guard on or before April 14, 2003.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, California, 92101. Marine Safety Office San Diego, Port Operations Department maintains the public docket for these rulemakings. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, California, 92101, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Joseph Brown, Port Safety and Security, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in these rulemakings by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP San Diego 03–010], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change these proposed rules in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office San Diego at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid these rulemakings, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

On September 16th and 17th, 2002, the Coast Guard published three temporary final rules suspending 33 CFR 165.1101, 33 CFR 165.1103, and 33 CFR 165.1104 and implementing temporary security zones at Naval Base San Diego, Naval Base Coronado, and Naval Submarine Base San Diego. See 67 FR 58524, 67 FR 58526, and 67 FR 58333. Modified versions of these zones have been in place since 1998 and the Coast Guard has not received any comments during that time and no negative incidents have been reported.

The U.S. Navy requested that Coast Guard implement these security zones in coordination with their installation of anti-small boat barrier booms at the three locations. If you would like to obtain information about the U.S. Navy's action, contact the Assistant Chief of Port Operations, Navy Region Southwest at 619–556–2400.

The Coast Guard proposes to modify the security zones to allow the U.S. Navy to put anti-small boat barrier booms at Naval Base San Diego (33 CFR 165.1101); Naval Submarine Base, San Diego (33 CFR 165.1103); and Naval Base Coronado (33 CFR 165.1104). The modification and expansion of these security zones is needed to ensure the physical protection of naval vessels moored in the area by providing adequate stand-off distance. The Coast Guard's action supports the Navy's action and is limited to the expansion of the existing zones.

The modification and expansion of these security zones will also prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Base Coronado, Naval Submarine Base San Diego, and Naval Base San Diego, and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. It will also safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Air Force, U.S. Pacific Fleet; Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast; Commander, U.S. Naval Base San Diego; Commander, Navy Region Southwest; Commanding Officer, Naval Station, San Diego; or Commander, Naval Base Coronado.

Discussion of Proposed Rule

Specifically, the Coast Guard is expanding the security zone boundaries at the request of the U.S. Navy so that the U.S. Navy can install anti-small boat barrier booms.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

These proposed rules are not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and do not require an assessment of potential costs and benefits under section 6 (a)(3) of that Order. The Office of Management and Budget has not reviewed them under that Order. They

are not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of these proposed rules to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Due to National Security interests, the implementation of these security zones is necessary for the protection of the United States and its people. The size of the zone is the minimum necessary to provide adequate protection for U.S. Naval vessels, their crews, adjoining areas, and the public. The entities most likely to be affected, if any, are pleasure craft engaged in recreational activities and sightseeing. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting U.S. Naval vessels, their crews, and the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether these proposed rules would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that these proposed rules would not have a significant economic impact on a substantial number of small entities because the expanded zones will still allow sufficient room for vessels to transit the channel unimpeded.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that these rules would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree these rules would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding these proposed rules so that they can better evaluate its effects on them and participate in the rulemakings. If the proposed rules would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Joseph Brown, Marine Safety Office San Diego at (619) 683–6495.

Collection of Information

These proposed rules would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed these proposed rules under that Order and have determined that they do not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though these proposed rules would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

These proposed rules would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

These proposed rules meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed these proposed rules under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. These rules are not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

These proposed rules do not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because they would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how these proposed rules might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed these proposed rules under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that these are not a ''significant energy action'' under that order because they are not a ''significant regulatory action'' under Executive Order 12866 and are not likely to have a significant adverse effect on the supply, distribution, or use of energy. They have not been designated by the Administrator of the Office of Information and Regulatory Affairs as significant energy actions. Therefore, they do not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of these proposed rules and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, these rules are categorically excluded from further environmental documentation because our action is limited to the expansion of existing security zones. The U.S. Navy has separately considered the impact of their proposed project including the placement of anti-small boat barrier booms. While we reviewed the Navy's environmental documentation, our analysis pertains solely to the expanded placement of the small markers designating the security zones already in the waterway. ''Categorical Exclusion Determinations'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Revise § 165.1101 to read as follows:

§ 165.1101 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: the water area within Naval Station, San Diego enclosed by the following points: Beginning at 32°41′16.5″ N, 117°08′01″ W (Point A); thence running southwesterly to 32°41′02.5″ N, 117°08′08.5″ W (Point B); to 32°40′55.0″ N 117°08′00.0″ W (Point C); to 32°40′ 49.5″ N 117°07′55.5″ W (Point D); to 32°40′44.6″ N, 117°07′49.3″ W (Point E); to 32°40′37.8 N 117°07′43.2″ W, (Point F); to 32°40′30.9″ N, 117°07′39.0″ W (Point G); 32°40′24.5″ N, 117°07′35.0″ W (Point H); to 32°40′17.2″ N, 117°07′30.8″ W (Point I); to 32°40′10.6″ N, 117°07′30.5″ W (Point J); to 32°39′59.0″ N, 117°07′29.0″ W (Point K); to 32°39′49.8″ N, 117°07′27.2″ W (Point L); to 32°39′43.0″ N, 117°07′25.5″ W (Point M); 32°39′36.5″ N, 117°07′24.2″ W, (Point N); thence running easterly to 32°39′38.5″ N, 117°07′06.5″ W (Point O); thence running generally northwesterly along the shoreline of the Naval Station to the place of beginning. All coordinates referenced use datum: NAD 1983.

(b) *Regulations.* (1) In accordance with the general regulations in §165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Base San Diego; Commander, Navy Region Southwest; or the Commanding Officer, Naval Station, San Diego.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 619–683–6495 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U. S. Navy.

3. Revise °165.1103 to read as follows:

§ 165.1103 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: The water adjacent to the Naval Submarine Base, San Diego commencing on a point on the shoreline of Ballast Point, at 32°41′11.2″ N, 117°13′57.0″ W (Point A), thence northerly to 32°41′31.8″ N, 117°14′00.6″ W (Point B), thence westerly to 32°41′32.7″ N, 117°14′03.2″ W (Point C), thence southwesterly to 32°41′30.5″ N, 117°14′17.5″ W (Point D), thence generally southeasterly along the shoreline of the Naval Submarine Base to the point of beginning, (Point A). All coordinates referenced use datum: NAD 1983.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast; or Commander, Naval Base San Diego.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 619–683–6495 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

4. Revise § 165.1104 to read as follows:

§ 165.1104 Security Zone: San Diego Bay, CA.

(a) *Location.* The following area is a security zone: on the waters along the northern shoreline of Naval Base Coronado, the area enclosed by the following points: Beginning at 32°42′53.0″N, 117°11′45.0″ W (Point A); thence running northerly to 32°42′55.5″N, 117°11′45.0″W, (Point B); thence running easterly to 32°42′57.0″N, 117°11′31.0″W, (Point C); thence southeasterly to 32°42′42.0″N, 117°11′04.0″W (Point D); thence southeasterly to 32°42′21.0″N, 117°10′47.0″W (Point E) thence running southerly to 32 °42′13.0″ N, 117 °10′51.0″ W (Point F); thence running generally northwesterly along the shoreline of Naval Base Coronado to the place of beginning. All coordinates referenced use datum: NAD 1983.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33, entry into the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commander, Naval Air Force, U.S. Pacific Fleet; Commander, Navy Region Southwest; or Commanding Officer, Naval Base Coronado.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 619–683–6495 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: January 23, 2003.

Stephen P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 03–3263 Filed 2–10–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7554]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are

available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2878, or (e-mail) *Michael.Grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federal implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 12(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4401 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Florida				
Polk County (Unincorporated Areas)				
Lake Myrtle No.2	From the eastern shoreline to the confluence with Peace Creek Drainage Canal.	*119	*120	City of Lake Wales, Polk County, (Unincorporated Areas).
Polk County (Unincorporated Areas)				
Maps available for inspection at the County Engineer Division, 330 West Church Street, Bartow, Florida. Send Comments to Mr. Jim W. Keene, Polk County Manager, PO Box 9005, Drawer CA01, Bartow Florida 33831.				
City of Lake Wales: Maps available for inspection at the Lake Wales City Administration Building, 201 West Central Avenue, Lake Wales, Florida. Send comments to Mr. Tony Otte, Lake Wales City Manager, PO Box 1320, Lake Wales, Florida 33859.				
Illinois				
Sangamon County (Unincorporated Areas)				
Fox Creek	At confluence with Polecat Creek	None	*571	Village of Chatham, Sangamon County (Unincorporated Areas).
	Approximately 1,100 feet upstream of Ptarmigan Drive	None	*587	
Jacksonville Branch	At confluence with Spring Creek	*540	*543	City of Springfield, Village of Jerome, City of Leland Grove, Sangamon County (Unincorporated Areas).
	Approximately 75 feet upstream of Koke Mill Road	None	*603	
Spring Creek	Approximately 1,600 feet downstream of North 8th Street.	*528	*529	City of Springfield, Sangamon County (Unincorporated Areas).
	Approximately 3,300 feet upstream of South Farmingdale Road.	*568	*569	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Polecat Creek	Approximately 2,300 feet upstream of confluence with Lick Creek.	None	*563	Village of Chatham, Sangamon County (Unincorporated Areas), City of Springfield
	Approximately 200 feet upstream of Broaddus Road	None	*601	
Jacksonville Branch Tributary.	At the confluence with Jacksonville Branch	*569	*570	City of Leland Grove, City of Springfield.
	Approximately 500 feet upstream of Wiggins Avenue	*574	*573	
Black Branch	Approximately 2,000 feet downstream of CSX Transportation.	None	*541	Sangamon County (Unincorporated Areas), Village of Rochester.
	At Maxhiemer Road	None	*571	
Unnamed Tributary to Lick Creek.	Approximately 0.56 mile downstream of Main Street	None	*598	Sangamon County (Unincorporated Areas), Village of Loami.
	Approximately 200 feet upstream of Center Street	None	*616	

Sangamon County (Unincorporated Areas)

Maps available for inspection at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, Illinois

Send comments to Mr. Andy Van Meter, Chairman of the Sangamon County Board of Commissioners, 200 South 9th Street, Room 201, Springfield, Illinois 62701.

Village of Chatham:

Maps available for inspection at the Chatham Village Hall, 116 East Mulberry Street, Chatham, Illinois or at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, Illinois.

Send comments to Mr. Tom Gray, Chatham Village, 116 East Mulberry Street, Chatham, Illinois 62629.

Village of Jerome:

Maps available for inspection at the Jerome Village, 2901 Leonard Street, Springfield, Illinois or at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, Illinois.

Send comments to Mr. Steve Roth, Jerome Village President, 2901 Leonard Street, Springfield, Illinois 62704.

City of Leland Grove:

Maps available for inspection at the Leland Grove City Hall, 2000 Chatham Road, Springfield, Illinois or at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, Illinois.

Send comments to the Honorable John A. Davis, Mayor of the City of Leland Grove, 2000 Chatham Road, Springfield, Illinois 62704.

Village of Loami:

Maps available for inspection at the Loami Village Hall, 104 South Main Street, Loami, Illinois or at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, Illinois.

Send comments to the Honorable Richard W. Mowery, Mayor of the Village of Loami, PO Box 226, Loami, Illinois 62661–0226.

Village of Rochester:

Maps available for inspection at the Rochester Village Hall. 1 Community Drive, Rochester, Illinois or at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, Illinois.

Send comments to the Mr. David Armstrong, Rochester Village President. 1 Community Drive, Rochester, Illinois 62563.

City of Springfield:

Maps available for inspection at the City of Springfield Public Works Department, 300 East Monroe Street, Room 201, Springfield, Illinois or at the Springfield-Sangamon County Regional Planning Commission, 200 South 9th Street, Room 212, Springfield, Illinois.

Send comments to the Honorable Karen Hasara, Mayor of the City of Springfield, 800 East Monroe Street, Springfield, Illinois 62701.

Beaufort County, North Carolina (Unincorporated Areas)

Pungo River Canal	Approximately 1.5 miles upstream of confluence with Pungo Lake Canal.	None	•7	Beaufort County (Unincorporated Areas).
	Approximately 750 feet downstream of State Route 99	None	•10	
Creeping Swamp	Approximately 0.7 mile downstream of State Route 102.	None	•36	Beaufort County (Unincorporated Areas).
	At the County boundary	None	•47	
•North American Vertical Datum				

Town of Aurora:

Maps available for inspection at the Aurora Town Hall, 295 Main Street, Aurora, North Carolina.

Send comments to The Honorable Joe Hooker, Mayor of the Town of Aurora, PO Box 86, Aurora, North Carolina 27806.

Beaufort County (Unincorporated Areas)

Maps available for inspection at the Beaufort County Building Inspection, 220 North Market Street, Washington, North Carolina.

Send comments to Mr. Donald Davenport, Beaufort County Manager, PO Box 1027, Washington, North Carolina 27889.

City of Washington:

Maps available for inspection at the City of Washington Building Inspection Department, 102 East Second Street, North Carolina.

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Send comments to Mr. R.L. Willoughby, Washington City Manager, PO Box 1988, Washington, North Carolina 27889.				
North Carolina Edgecombe County (Unincorporated Areas)				
Beaverdam Branch	At the confluence with Cokey Swamp	None	•59	Edgecombe County (Unincorporated Areas).
	Approximately 0.8 mile upstream of McKendree Church Road.	None	•73	
Cokey Swamp	Approximately 1,100 feet upstream of Davistown-Mercer Road.	None	•57	Edgecombe County (Unincorporated Areas).
	Approximately 1.1 miles downstream of the confluence with Little Cokey Swamp.	None	•77	
Corn Creek	At the confluence with Town Creek	None	•61	Edgecombe County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Temperance Hall Road.	None	•104	
Deloach Branch	At the confluence with Cokey Swamp	None	•70	Edgecombe County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Cokey Swamp.	None	•72	
Dickson Branch	At the confluence with Cokey Swamp	None	•73	Edgecombe County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Cokey Swamp.	None	•78	
Little Cokey Swamp	Approximately 0.4 mile upstream of the confluence with Cokey Swamp.	None	•82	Edgecombe County (Unincorporated Areas).
	Approximately 50 feet downstream of Green Pasture Road.	None	•92	
Millpond Branch	At the confluence with Cokey Swamp	None	•66	Edgecombe County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Cokey Swamp.	None	•70	
Otter Creek	Approximately 1,000 feet downstream of the confluence with Otter Creek tributary.	None	•47	Edgecombe County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Lewis Road	None	•91	
Otter Creek Tributary	At the County boundary	None	•48	Edgecombe County (Unincorporated Areas).
	Approximately 2.2 miles upstream of the County boundary.	None	•65	
Sasnett Mill Branch	At the confluence with Cokey Swamp	None	•70	Edgecombe County (Unincorporated Areas).
	Approximately 300 feet upstream of Kent Road	None	•64	
Town Creek	Approximately 150 feet upstream of State Route 43	None	•59	Edgecombe County (Unincorporated Areas).
	Approximately 550 feet upstream of the County boundary.	None	•73	
Williamson Branch	At the confluence with Town Creek	None	•70	Edgecombe County (Unincorporated Areas).
	Approximately 2.3 miles upstream of the confluence with Town Creek.	None	•82	
Buck Swamp	At confluence with Tar River	None	•66	Edgecombe County (Unincorporated Areas).
	Approximately 1,750 feet upstream of Melton Road	None	•78	
Walnut Creek	At confluence with Tar River	None	•60	Edgecombe County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Alternate Route 64.	None	•68	
Tar River	At the Edgecombe County boundary	•33	•37	Edgecombe County (Unincorporated Areas).
	At the City of Rocky Mount Extraterritorial Jurisdiction limits.	None	•71	
Beech Branch	At the confluence with the Tar River	None	•63	Edgecombe County (Unincorporated Areas).
	At the City of Rocky Mount Extraterritorial Jurisdiction limits.	None	•88	
Whit Oak Swamp	At confluence with Swift Creek	•62	•61	Edgecombe County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1.0 mile upstream of Speight's Chapel Road.	None	•107	
Racoon Branch	At the confluence with Penders Mill Run	None	•70	Edgecombe County (Unincorporated Areas).
	Approximately 350 feet upstream of CSX Railroad	None	•88	
Penders Mill Run	At the confluence with Tar River	None	•53	Edgecombe County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Taylor Drive	None	•90	
Kay Branch	At confluence with Tar River	None	•58	Edgecombe County (Unincorporated Areas).
	Approximately 1,160 feet upstream of confluence with Tar River.	None	•62	
Maple Swamp	At confluence with Fishing Creek	•49	•51	Edgecombe County (Unincorporated Areas).
	Approximately 760 feet upstream of O'Neal Road	None	•76	
Leggett Canal	Approximately 0.5 mile upstream of confluence with Swift Creek.	None	•56	Town of Leggett.
	Approximately 1,525 feet upstream of State Route 30	None	•69	
Tar River Tributary	At confluence with Tar River	•49	•58	Edgecombe County (Unincorporated Areas).
	Approximately 1.0 mile downstream of confluence with Tar River.	•49	•50	
Holly Creek	Just upstream of confluence with Hendricks Creek	None	•45	Town of Tarboro.
	Approximately 0.4 mile upstream of U.S. Route 64	None	•105	
Tributary A to Hendricks Creek.	Approximately 150 feet upstream of confluence with Hendricks Creek.	•50	•48	Town of Tarboro.
	At Speight Forest Drive	•78	•77	
Hendricks Creek	At confluence with Tar River	•42	•45	Town of Tarboro.
	Approximately 1.06 miles upstream of Industrial Parkway.	•74	•75	
East Tarboro Canal	At confluence with Tar River	•43	•45	Town of Tarboro.
	Approximately 700 feet upstream of Forest Acres Drive.	None	•55	
Cheeks Mill Creek	At confluence with Tar River	•33	•37	Edgecombe County (Unincorporated Areas).
	Approximately 700 feet downstream of Britt Farm Road.	None	•42	
Conetoe Creek	Approximately 100 feet downstream of the County boundary.	None	•42	Edgecombe County (Unincorporated Areas).
	Approximately 400 feet upstream of North Bowers Road.	None	•76	
NC 42 Canal	At confluence with Conetoe Creek	None	•42	Edgecombe County (Unincorporated Areas), Town of Conetoe.
	Approximately 1,150 feet upstream of Highway 64A	None	•47	
Crisp Creek	At confluence with Conetoe Creek	None	• 48	Edgecombe County (Unincorporated Areas).
	At County boundary	None	• 61	
Fountain Fork Creek	At confluence with Conetoe Creek	None	• 57	Edgecombe County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Route 142	None	• 73	
Moore Swamp	At the confluence with Maple Swamp	None	• 58	Edgecombe County (Unincorporated Areas).
	Approximately 250 feet downstream of a Draughn Road.	None	• 61	
Deep Creek	Approximately 0.7 mile upstream of Dickens Road	54	• 53	Edgecombe County (Unincorporated Areas), Town of Speed.
	Approximately 0.6 mile upstream of County boundary	None	• 62	
Deep Creek Tributary 2	At confluence with Deep Creek	None	• 57	Edgecombe County (Unincorporated Areas).
	Approximately 500 feet downstream of Dickens Road	None	• 60	
Savage Mill Run	At the upstream side of CSX Railroad	• 57	• 58	Edgecombe County (Unincorporated Areas), Town of Speed.
	Approximately 0.8 mile upstream of Mill Pond Road	None	• 74	
Speed Levee Ponding Area	Ponding behind Speed Levee	None	• 51	Edgecombe County (Unincorporated Areas), Town of Speed.

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Princeville Ponding Area	Ponding behind Princeville Levee	None	• 35	Town of Princeville.

Edgecombe County (Unincorporated Areas)

Maps available for inspection at Edgecombe County (Unincorporated Areas) Planning Department, 201 Saint Andrews Street, Tarboro, North Carolina.
Send comments to Mr. Lorenzo Carmon, Edgecombe County (Unincorporated Areas) Manager, 201 Saint Andrews Street, Tarboro, North Carolina 27866.

Town of Conetoe:
Maps available for inspection at the Conetoe Town Hall, 204 West Church Street, Conetoe, North Carolina.
Send comments to The Honorable Jean Harris, Mayor of the Town of Conetoe, P.O. Box 218, Conetoe, North Carolina 27819.

Town of Leggett:
Maps available for inspection at the Leggett Town Hall, Route 2, Tarboro, North Carolina.
Send comments to The Honorable Charles Corbett, Mayor of the Town of Leggett, Route 2, Box 199A, Tarboro, North Carolina 27886.

Town of Princeville:
Maps available for inspection at the Princeville Town Hall, Planning Office, 310 Mutual Boulevard, Princeton, North Carolina.
Send comments to Mr. Bobby Hopkins, Princeville Town Manager, 310 Mutual Boulevard, Princeton, North Carolina 27886.

Town of Speed:
Maps available for inspection at the Speed Town Hall, 200 Railroad Street, Speed, North Carolina.
Send comments to The Honorable Wilbert Harrison, Mayor of the Town of Speed, P.O. Box 327, Speed, North Carolina 27881.

Town of Tarboro:
Maps available for inspection at the Tarboro Town Hall, Planning Department, 500 Main Street, Tarboro, North Carolina.
Send comments to Mr. Samuel Noble, Tarboro Town Manager, P.O. Box 220, Tarboro, North Carolina 27886.

North Carolina
Franklin County (Unincorporated Areas)

Bear Swamp Creek	Approximately 1,500 feet downstream of Dyking Road	None	•212	Franklin County (Unincorporated Areas).
	Approximately 2.1 miles upstream of Dyking Road	None	•229	
Big Branch Creek	At the confluence with Cedar Creek	None	•193	Franklin County (Unincorporated Areas).
	Approximately 1 mile upstream of San Horton Road ...	None	•243	
Big Peachtree Creek	At the County boundary	None	•204	Franklin County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Gardner Road ...	None	•234	
Big Peachtree Creek Tributary.	At the confluence with Big Peachtree Creek	None	•208	Franklin County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Big Peachtree Creek.	None	•231	
Billys Creek	Approximately 1,180 feet upstream of the confluence with the Tar River.	None	•226	Franklin County (Unincorporated Areas).
	Approximately 1.9 miles upstream of the confluence with the Tar River.	None	•243	
Brandy Creek	At the confluence with Cedar Creek	None	•275	Franklin County (Unincorporated Areas), Town of Youngsville.
	Approximately 425 feet upstream of Park Avenue	None	•381	
Brandy Creek Tributary	At the confluence with Brandy Creek	None	•310	Franklin County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Brandy Creek.	None	•333	
Buffalo Creek South	Approximately 0.5 mile upstream of the confluence with the Tar River.	None	•213	Franklin County (Unincorporated Areas).
	Approximately 2.7 miles upstream of West River Road	None	•247	
Buffalo Creek	At the confluence with Sandy Creek	None	•271	Franklin County (Unincorporated Areas).
	Approximately 2.5 miles upstream of U.S. 401	None	•355	
Buffalo Creek Tributary 1 ...	At the confluence with Buffalo Creek	None	•283	Franklin County (Unincorporated Areas).
	Approximately 700 feet upstream of Tollie Weldon Road.	None	•327	
Camping Creek	At the confluence with Cedar Creek	None	•231	Franklin County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Hart Road	None	•300	
Camping Creek Tributary 1	At the confluence with Camping Creek	None	•264	Franklin County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Camping Creek.	None	•286	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Cedar Creek	Approximately 0.8 mile upstream of the confluence with the Tar River.	None	•193	Franklin County (Unincorporated Areas), Town of Franklinton.
	Approximately 1.1 miles upstream of Pocomoke Road	None	•427	
Cedar Creek Tributory 1	At the confluence with Cedar Creek	None	•212	Franklin County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Bennette Perry Road.	None	•252	
Cedar Creek Tributary 2	At the confluence with Cedar Creek	None	•269	Franklin County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Hill Road	None	•338	
Cedar Creek Tributary 3	At the Confluence with Cedar Creek	None	•305	Franklin County (Unincorporated Areas).
	Approximately 0.4 mile downstream of Long Mill Road	None	•380	
Crooked Creek	Approximately 80 feet downstream of NC 98	None	•174	Franklin County (Unincorporated Areas), Town of Bunn.
	Approximately 0.9 mile upstream of Moores Pond Road.	None	•375	
Crooked Creek Tributary 1	At the confluence with Crooked Creek	None	•193	Franklin County (Unincorporated Areas), Town of Bunn.
	Approximately 1.4 miles upstream of Pearces Road	None	•241	
Crooked Creek Tributary 2	At the confluence with Crooked Creek	None	•234	Franklin County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence with Crooked Creek.	None	•270	
Crooked Creek Tributary 3	At the confluence with Crooked Creek	None	•266	Franklin County (Unincorporated Areas).
	Approximately 0.6 mile upstream of U.S. 401	None	•330	
Crooked Creek Tributary 4	At the confluence with Crooked Creek Tributary 3	None	•270	Franklin County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Crooked Creek Tributary 3.	None	•325	
Cypress Creek	At the confluence with the Tar River	None	•171	Franklin County (Unincorporated Areas).
	Approximately 1.6 miles upstream of NC 56	None	•260	
Deer Branch	At the confluence with Sandy Creek	None	*185	Franklin County (Unincorporated Areas).
	Approximately 1,200 feet upstream of NC 58	None	•249	
Devile Cradle Creek	At the confluence with Sandy Creek	None	•251	Franklin County (Unincorporated Areas).
	Approximately 1.9 miles upstream of NC 39	None	•379	
Fishing Creek	Approximately 1,450 feet upstream of NC 561	None	•165	Franklin County (Unincorporated Areas).
	Approximately 1.1 miles upstream of NC 561	None	•166	
Flatrock Creek	At the confluence with Devils Cradle Creek	None	•264	Franklin County (Unincorporated Areas).
	Approximately 2.6 miles upstream of Lake View Road	None	•398	
Fox Creek	Approximately 0.5 mile upstream of NC/56 NC 581	None	•204	Franklin County (Unincorporated Areas), Town of Louisburg.
	Approximately 0.9 mile upstream of NC 561	None	•225	
Giles Creek	At the confluence with Tooles Creek	None	•238	Franklin County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Tooles Creek.	None	•254	
Jumping Run	Approximately 0.6 mile downstream of East River Road.	None	•195	Franklin County (Unincorporated Areas).
	Approximately 975 feet upstream of East River Road	None	•204	
Little Shocco Creek	At the confluence with Shocco Creek	None	•206	Franklin County (Unincorporated Areas).
	Approximately 2.3 miles upstream of Rod Alston Road	None	•258	
Long Branch	At the confluence with Cypress Creek	None	•236	Franklin County (Unincorporated Areas).
	Approximately 1.4 miles upstream of the confluence with Cypress Creek.	None	•265	
Lynch Creek	Approximately 0.5 mile downstream of Dyking Road	None	•213	Franklin County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	At the County boundary	None	•332	
Middle Creek	Approximately 1,200 feet upstream of Green Hill Road	None	•242	Franklin County (Unincorporated Areas).
	Approximately 1.8 miles upstream of Green Hill Road	None	•257	
Norris Creek	At the confluence with Crooked Creek	None	•181	Franklin County (Unincorporated Areas).
	Approximately 450 feet upstream of Bethlehem Church.	None	•331	
Norris Creek Tributary 1	At the confluence with Norris Creek	None	•197	Franklin County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Johnson Town Road.	None	•237	
Red Bud Creek	Approximately 1.4 miles downstream of NC 58	None	•194	Franklin County (Unincorporated Areas).
	Approximately 4.2 miles upstream of NC 58	None	•254	
Sandy Creek	At the downstream County boundary	None	•184	Franklin County (Unincorporated Areas).
	Approximately 1 mile upstream of Hightower Road	None	•281	
Sandy Creek Tributary 1	At the confluence with Sandy Creek	None	•187	Franklin County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Reed Road	None	•209	
Sandy Creek Tributary 2	At the confluence with Sandy Creek	None	•193	Franklin County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Sandy Creek.	None	•209	
Sandy Creek Tributary 3	At the confluence with Sandy Creek	None	•205	Franklin County (Unincorporated Areas).
	Approximately 630 feet upstream of Douglas Williams Road.	None	•263	
Sandy Creek Tributary 4	At the confluence with Sandy Creek Tributrary 3	None	•207	Franklin County (Unincorporated Areas).
	Approximately 230 feet upstream of JB Leonard Road	None	•231	
Sandy Creek Tributary 5	At the confluence with Sandy Creek	None	•206	Franklin County (Unincorporated Areas).
	Approximately 1.3 m iles upstream of NC 561	None	•314	
Sandy Creek Tributary 6	At the confluence with Sandy Creek	None	•212	Franklin County (Unincorporated Areas).
	Approximately 500 feet upstream af Raymond Tharrington Road.	None	•257	
Sandy Creek Tributary 7	At the confluence with Sandy Creek	None	•236	Franklin County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Person Road	None	•500	
Sandy Creek Tributary 8	At the confluence with Sandy Creek Tributary 7	None	•248	Franklin County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence with Sandy Creek Tributary 7.	None	•284	
Sandy Creek Tributary 9	At the confluence with Sandy Creek	None	•250	Franklin County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Sandy Creek.	None	•251	
Sandy Creek Tributary 10	At the confluence with Sandy Creek	None	•265	Franklin County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Sandy Creek.	None	•279	
Sandy Creek Tributary 13	At the confluence with Sandy Creek	None	•215	Franklin County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence of Sandy Creek Tributary 15.	None	•270	
Sandy Creek Tributary 14	At the confluence with Sandy Creek Tributary 13	None	•231	Franklin County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence with Sandy Creek Tributary 13.	None	•277	
Sandy Creek tributary 15	At the confluence with Sandy Creek Tributary 13	None	•262	Franklin County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Sandy Creek Tributary 13.	None	•270	
Shocco Creek	At the confluence of Fishing Creek	None	•166	Franklin County (Unincorporated Areas).
	Approximately 4.1 miles upstream of the NC 58	None	•206	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Sycamore Creek	Approximately 1,000 feet downstream of East River Road.	None	•200	Franklin County (Unincorporated Areas).
	Approximately 1,400 feet downstream of Ronald Tharrington Road.	None	•236	
Tar River Tributary 1	Approximately 5000 feet upstream of the confluence with the Tar River.	None	•197	Franklin County (Unincorporated Areas).
	Approximately 0.9 mile upstream of George Leonard Road.	None	•209	
Taylors Creek	Approximately 750 feet upstream of confluence with the Tar River.	None	•234	Franklin County (Unincorporated Areas).
	Approximately 1.6 miles upstream of the confluence with the Tar River.	None	•240	
Tooles Creek	At the confluence with Lynch Creek	None	•213	Franklin County (Unincorporated Areas).
	Approximately 100 feet downstream of Joe Ward Road.	None	•310	
Wolfpen Branch	Approximately 0.6 mile upstream of the confluence with the Tar River.	None	•197	Franklin County (Unincorporated Areas), Town of Louisburg.
	Approximately 450 feet downstream of of NC 39	None	•212	

Franklin County (Unincorporated Areas)

Map available for inspection at the Franklin County GIS Department, 215 East Nash Street, Louisburg, North Carolina.
Send comments to Dr. John Ball, chairman of the Franklin County Board of Commissioners, 113 Market Street, Louisburg, North Carolina 27549.

Town of Bunn:
Map available for inspection at the Bunn Town Hall, 601 Main Street, Bunn, North Carolina.
Send comments to The Honorable Jerry Kenneth, Mayor of the Town of Bunn, P.O. Box 398, Bunn, North Carolina 27508.

Town of Franklinton:
Map available for inspection at the Franklinton Town Hall, 7 West Mason Street, Franklinton, North Carolina.
Send comments to The Honorable J. Larry Kearney, Mayor of the Town of Franklinton, P.O. Box 309, Franklinton, North Carolina 27525.

Town of Louisburg:
Map available for inspection at the Louisburg Town Hall, 110 West Nash Street, Louisburg, North Carolina.
Send comments to The Honorable Karl T. Pernell, Mayor of the Town of Louisburg, 110 West Nash Street, North Carolina 27549.

Town of Youngsville:
Map available for inspection at the Youngsville Town Hall, 118 North Cross Street, Youngsville, North Carolina.
Send comments to The Honorable Samuel K. Hardwick, Mayor of the Town of Youngsville, P.O. Box 109, Youngsville, North Carolina 27596.

North Carolina
Martin County (Unincorporated Areas)

Ross Swamp	At the confluence with Collie Swamp	None	•42	Martin County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Vanderford Road	None	•61	
Flat Swamp	At the confluence with Tranters Creek	None	•39	Martin County (Unincorporated Areas).
	Approximately 1,400 feet upstream of Matthew Road	None	•65	
Flat Swamp Tributary	At the confluence with Flat Swamp	None	•47	Town of Robersonville, Martin County (Unincorporated Areas).
Collie Swamp	At the confluence with Tranters Creek	None	•34	Martin County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence of Huskanaw Swamp.	None	•47	
Collie Swamp Tributary 1	At the confluence with Collie Swamp	None	•34	Martin County (Unincorporated Areas).
	Approximately 1.5 miles upstream of the confluence with Collie Swamp.	None	•38	
Collie Swamp Tributary 2	At the confluence with Collie Swamp	None	•34	Martin County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Race Track Road	None	•39	
Collie Swamp Tributary 7	At the confluence with Collie Swamp Tributary 4	None	•40	Martin County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Collie Swamp Tributary 4.	None	•47	
Collie Swamp Tributary 4	At the confluence with Collie Swamp	None	•40	Martin County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence of Collie Swamp Tributary 7.	None	•45	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Collie Swamp Tributary 5 ...	At the confluence with Collie Swamp	None	•41	Martin County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Collie Swamp.	None	•45	
Collie Swamp Tributary 6 ...	At the confluence with Collie Swamp	None	•41	Martin County (Unincorporated Areas).
	Approximately 1.5 miles upstream of the confluence of Collie Swamp.	None	•43	
Huskanaw Swamp	At the confluence with Collie Swamp	None	•43	Martin County (Unincorporated Areas).
	Approximately 900 feet upstream of Perkins Road	None	•55	
Turkey Swamp	At the confluence of Bear Grass Swamp	None	•31	Martin County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Jack Robinson Road.	None	•43	
Turkey Swamp Tributary 1	At the confluence with Turkey Swamp	None	•34	Martin County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Turkey Swamp.	None	•41	
Tranters Creek	At the confluence of Bear Grass Swamp	None	•31	Martin County (Unincorporated Areas).
	At the confluence of Flat Swamp	None	•39	
Bear Grass Swamp	At the confluence with Tranters Creek	None	•31	Martin County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Lee Road	None	•41	
Crisp Creek	Approximately 2.9 miles downstream of the confluence of Crisp Creek Tributary.	None	•59	Martin County (Unincorporated Areas).
	Approximately 500 feet upstream of the confluence of Crisp Creek Tributary.	None	•70	

Martin County (Unincorporated Areas)

Maps available for inspection at the Martin County Building Inspector's Office, 305 East Main Street, Williamston, North Carolina.
Send comments to Mr. Donnie H. Pittman, Martin County Manager, P.O. Box 668, Williamston, North Carolina 27892.

Town of Robersonville:

Maps available for inspection at the Robersonville Town Hall, 114 South Main Street, Robersonville, North Carolina.
Send comments to Mr. John Pritchard, Robersonville Town Manager, P.O. Box 487, Robersonville, North Carolina 27871.

North Carolina
Onslow County (Unincorporated Areas)

Atlantic Ocean	At Intracoastal Waterway and Salliers By confluence ..	•7	•8	Unincorporated Areas of Onslow County.
	Approximately 2,000 feet east of River Drive and New River Inlet Road intersection.	•15	•18	
Bachelor's Delight Swamp ..	At the confluence with New River	None	•9	Unincorporated Areas of Onslow County.
	Approximately 0.5 mile upstream of the confluence of Bachelor's Delight Swamp Tributary 2.	None	•29	
Bachelor's Delight Swamp Tributary 1.	Approximately 0.5 mile upstream of the confluence with Bachelor's Delight Swamp.	None	•30	Unincorporated Areas of Onslow County.
	Approximately 1,150 feet upstream of Timothy Road ..	None	•34	
Bachelor's Delight Swamp Tributary 2.	At the confluence with Bachelor's Delight Swamp	None	•21	Unincorporated Areas of Onslow County.
	Approximately 1,400 feet upstream of the confluence with Bachelor's Delight Swamp.	None	•26	
Bear Creek	Approximately 150 feet downstream of NC 173	None	•9	Unincorporated Areas of Onslow County.
	Approximately 1.4 miles upstream of NC 172	None	•31	
Bearhead Creek	Approximately 0.8 mile upstream of the confluence with Wallace Creek.	•2	•3	Unicorporated Areas of Onslow County, City of Jacksonville.
	Approximately 1.3 miles upstream of Holcomb Boulevard.	None	•21	
Bell Swamp	Approximately 800 feet upstream of NC 172	None	•10	Unicorporated Areas of Onslow County.
	Approximately 0.5 mile upstream of Hubert Boulevard	None	•32	
Blue Creek	Approximately 1.4 miles upstream of Richlands Highway.	None	•18	Unicorporated Areas of Onslow County.
	Approximately 300 feet upstream of Pony Farm Road.	None	•44	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Brick Kiln Branch (at White Oak River).	At the confluence with White Oak River	None	•11	Unicorporated Areas of Onslow County.
	Approximately 0.5 mile upstream of the confluence with White Oak River.	None	•17	
Cartwheel Branch	At the confluence with Holland Mill Creek	None	•8	Uicorporated Areas of Onslow County.
	Approximately 125 feet upstream of Swansboro Loop Road.	None	•10	
Chinkapin Branch	At the confluence with White Oak River	None	•38	Unicorporated Areas of Onslow County.
	Approximately 1.7 miles upstream of the confluence with White Oak River.	None	•42	
Cogdels Creek	Approximately 100 feet upstream of the confluence with New River.	•2	•3	Unicorporated Areas of Onslow County.
	Approximately 0.5 mile upstream of Sneads Ferry Road.	None	•24	
Cowford Branch	At the confluence with New River	None	•39	Unicorporated Areas of Onslow County.
	Approximately 0.56 mile upstream of State Route 24	None	•51	
Cowhead Creek	Approximately 0.6 mile upstream of the confluence with Frenchs Creek.	•2		Unicorporated Areas of Onslow County, City of Jacksonville.
	Approximately 2.5 miles upstream if Sneads Ferry Road.	None	•35	
Cowhorn Swamp	Approximately 950 feet upstream of the confluence with Jenkins Swamp.	•31	•32	Unicorporated Areas of Onslow County.
	Approximately 0.6 mile upstream of Hoffmann Forest Road.	None	•52	
Deep Run	At the confluence with Southwest Creek	None	•27	Unicorporated Areas of Onslow County.
	Approximately 0.8 mile upstream of Ben Williams Road.	None	•51	
Freemans Creek	At the confluence with White Oak River	None	•9	Unicorporated Areas of Onslow County.
	Approximately 0.7 mile upstream of the confluence with White Oak River.	None	•9	
Frenchs Creek	At the confluence of Jumping Run	•2	•3	Unicorporated Areas of Onslow County, City of Jacksonville.
	Approximately 0.6 mile upstream of Marine Road	None	•16	
Gibson Branch	At the confluence of White Oak River	None	•24	Unicorporated Areas of Onslow County.
	Approximately 1.1 miles upstream of White Oak River Road.	None	•41	
Grants Creek	At the confluence of White Oak River	None	•9	Unicorporated Areas of Onslow County.
	Approximately 700 feet upstream of the confluence of Halls Branch (Cummins Creek).	None	•14	
Half Moon Creek	At the confluence with New River	None	•9	Unicorporated Areas of Onslow County, City of Jacksonville.
	Approximately 1.3 miles upstream of Ramsey Road	None	•44	
Half Moon Creek Tributary 1.	At the confluence with Half Moon Creek	None	•24	Unicorporated Areas of Onslow County.
	Approximately 1.830 feet upstream of the confluence with Half Moon Creek.	None	•28	
Hargetts Creek	Approximately 1.4 miles upstream of the confluence with White Oak River.	None	•9	Unicorporated Areas of Onslow County.
	Approximately 1,100 feet downstream of Sloan Farm Road.	None	•15	
Harris Creek	At the confluence with Southwest Creek	None	•24	Unicorporated Areas of Onslow County.
	Approximately 1,900 feet upstream of Harris Creek Road.	None	•42	
Harris Creek Tributary 1	At the confluence with Harris Creek	None	•32	Unicorporated Areas of Onslow County.
	Approximately 500 feet upstream of Burgaw Highway	None	•39	
Haws Run	At the confluence with Southwest Creek	None	•18	Unicorporated Areas of Onslow County.

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1.0 mile upstream of Haws Run Road	None	•40	
Haws Run Tributary 1	At the confluence with Haws Run	None	•23	Unicorporated Areas of Onslow County.
	Approximately 1,000 feet upstream of the confluence with Haws Run.	None	•23	
Haws Run Tributary 2	At the confluence with Haws Run	None	•27	Unicorporated Areas of Onslow County.
	Approximately 200 feet upstream of Harris Creek Road.	None	•33	
Hicks Run	At the confluence with Southwest Creek	•2	•6	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 0.9 mile upstream of High Hill Road	None	•46	
Holand Mill Creek	Approximately 1.9 miles upstream of the confluence with White Oak River.	None	•8	Unincorporated Areas of Onslow County.
	Approximately 1,250 feet upstream of Belgrade Swansboro Road.	None	•21	
Horse Swamp	At the confluence with Little Northeast Creek	None	•14	Unincorporated Areas of Onslow County.
	Approximately 1.4 miles upstream of Rockey Run Road.	None	•36	
Jenkins Swamp	At the confluence with New River	•25	•24	Unincorporated Areas of Onslow County.
	Approximately 0.4 mile upstream of SR1003 Comfort Road.	None	•55	
Jumping Run	At the confluence with Frenchs Creek	•2	•3	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 1.2 miles upstream of Sneads Ferry Road.	None	•26	
Little Northeast Creek	At the confluence with Northeast Creek	None	•2	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 3.0 miles upstream of the confluence with Horse Swamp.	None	•28	
Mill Run	At the confluence with Southwest Creek	•2	•3	Unincorporated Areas of Onslow County.
	Approximately 2.3 miles upstream of Verona Road	None	•37	
Mill Swamp	At the confluence with New River	•25	•24	Unincorporated Areas of Onslow County, Town of Richards.
	Approximately 1,000 feet upstream of North Wilmington Street.	None	•35	
New River	Approximately 0.4 mile upstream of the confluence with Blue Creek.	None	•7	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 0.5 mile upstream of State Route 1235	None	•73	
New River Tributary 1	At the confluence with New River	None	•50	Unincorporated Areas of Onslow County.
	Approximately 50 feet upstream of A 1 Taylor Road	None	•74	
New River Tributary 2	At the confluence with New River	None	•9	Unincorporated Areas of Onslow County.
	Approximately 1.1 mile upstream of Richlands Highway.	None	•45	
New River Tributary 3	At the confluence with New River Tributary 2	None	•16	Unincorporated Areas of Onslow County.
	Approximately 1.0 mile upstream of the confluence with New River Tributary 2.	None	•33	
New River Tributary 4	At the confluence with New River	None	•19	Unincorporated Areas of Onslow County.
	Approximately 150 feet upstream of Richlands Highway.	None	•44	
New River Tributary 5	At the confluence with New River	None	•22	Unincorporated Areas of Onslow County.
	Approximately 0.4 mile upstream of Duffy Field Road	None	•42	
New River Tributary 6	At the confluence with New River Tributary 5	None	•25	Unincorporated Areas of Onslow County.
	Approximately 1,700 feet upstream of the confluence with New River Tributary 5.	None	•27	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
New River Tributary 7	At the confluence with New River Tributary 5	None	•26	Unincorporated Areas of Onslow County.
	Approximately 1.7 miles upstream of the confluence with New River Tributary 5.	None	•44	
North Branch at Lauradale Subdivision.	At the confluence with New River	None	•9	Unincorporated Areas of Onslow County.
	Approximately 0.7 mile upstream of the confluence with New River.	None	•9	
Northeast Creek	At the confluence of Little Northeast Creek	None	•2	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 0.6 mile upstream of North Marine Boulevard.	None	•27	
Northeast Creek Tributary 1	At the confluence with Northeast Creek	None	•0	City of Jacksonville.
	Approximately 0.4 mile upstream of the confluence with Northeast Creek.	None	•10	
Northeast Creek Tributary 2	At the confluence with Northeast Creek	None	•7	City of Jacksonville.
	Approximately 0.6 mile upstream of the confluence with Northeast Creek.	None	•9	
Parrot Swamp	Approximately 1,850 feet upstream of Queens Creek Road.	•9	•10	Unincorporated Areas of Onslow County.
	Approximately 1.0 mile upstream of Queens Creek Road.	None	•20	
Poplar Creek	At the confluence with Little Northeast Creek	None	•3	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 0.4 mile upstream of Waters Road	None	•26	
Queen Creek	Approximately 1.2 miles upstream of NC 24	None	•10	Unincorporated Areas of Onslow County.
	Approximately 0.5 mile upstream of Camp Lejeune Railroad.	None	•25	
Rocky Run	At confluence with Little Northeast Creek	None	•8	Unincorporated Area of Onslow County.
	Approximately 1,400 feet upstream of confluence with Little Northeaster.	None	•13	
South Branch at Lauderdale Subdivision.	At the confluence with North Branch at Lauderdale Subdivision.	None	•9	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 1.0 mile upstream of the confluence with North Branch at Lauderdale Subdivision.	None	•36	
Southwest Creek	Approximately 2.5 miles upstream of the confluence with New River.	•2	•3	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 0.6 mile upstream of Five Mile Road	None	•65	
Southwest Creek Tributary 2.	At the confluence with Southwest Creek	None	•46	Unincorporated Areas of Onslow County.
	Approximately 1.2 miles upstream of Red Lane	None	•56	
Southwest Creek Tributary 3.	At the confluence with Southwest Creek	None	•54	Unincorporated Areas of Onslow County.
	Approximately 1.7 miles upstream of the confluence with Southwest Creek.	None	•68	
Southwest Creek Tributary 4.	At the confluence with Southwest Creek Tributary 3	None	•61	Unincorporated Areas of Onslow County.
	Approximately 1,700 feet upstream of Five Mile Road	None	•70	
Starkys Creek	At confluence with White Oak River	None	•10	Unincorporated Areas of Onslow County.
	Approximately 1,750 feet upstream of 1–17	None	•44	
Stump Sound	At the intersection of Chadwick Acres Road and Carroll Street.	•6	•8	Unincorporated Areas of Onslow County.
	Approximately 1,000 feet south of the intersection of Harbor Point Road and Ocracoke Road.	•7	•11	
Wallace Creek	At the upstream side of Norfolk Southern Railway	•2	•3	Unincorporated Areas of Onslow County.
	Approximately 4.2 miles upstream of Holcomb Boulevard.	None	•22	
Wallace Creek Tributary 1	At the confluence with Wallace Creek	None	•14	Unincorporated Areas of Onslow County.
	Approximately 500 feet downstream of Lejeune Boulevard.	None	•27	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Webb Creek	At the confluence with White Oak River	None	•9	Unincorporated Areas of Onslow County.
	Approximately 1,200 feet downstream of Parkertown Road.	None	•20	
White Oak River	Approximately 500 feet upstream of the confluence of Webb Creek.	None	•9	Unincorporated Areas of Onslow County.
	At upstream the confluence of Chinkapin Branch	None	•50	
Wolf Swamp	At North Marine Boulevard	None	•22	Unincorporated Areas of Onslow County, City of Jacksonville.
	Approximately 0.9 mile upstream of Ramsey Road	None	•42	

Onslow County (Unincorporated Areas)

Maps available for inspect at the Onslow County Flood plain Administration, 604 College Street, Jacksonville, North Carolina 28540.
Send comments to Mr. Ron Lewis, Onslow County Manager, 118 Old Bridge Street, Jacksonville, North Carolina 28540.

City of Jacksonville:

Maps available for inspection at Jacksonville City Hall, 211 Johnson Boulevard, Jacksonville, North Carolina 28541.
Send comments to The Honorable George Jones, Mayor of the City of Jacksonville, P.O. Box 128, Jacksonville, North Carolina 28541.

Town of Richlands:

Maps available for inspection at Richlands Town Hall, 106 North Wilmington Street, Jacksonville, North Carolina 28540.
Send comments to Mr. Greg Whitehead, Town of Richlands Administrator, P.O. Box 245, Richlands, North Carolina 28574.

North Carolina
Vance County (Unincorporated Areas)

Buffalo Creek (North)	At the confluence with Tar River	•222	•228	Vance County (Unincorporated Areas).
	Approximately 2.3 miles upstream of Dick Smith Road	None	•226	
Cattail Creek	At the confluence with Sandy Creek	None	•329	Vance County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence with Dickies Creek.	None	•352	
Dickies Creek	At the confluence with Sandy Creek	None	•315	Vance County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Sandy Creek.	None	•320	
Joes Branch	At the confluence with Ruin Creek	None	•296	Vance County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Old Country Road.	None	•396	
Long Creek	At the confluence with Tabbs Creek	None	•237	Vance County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Kittrell College Road.	None	•291	
Lynch Creek	At the Franklin/Vance County boundary	None	•333	Vance County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Gillburg Road	None	•347	
Martin Creek	At the influence with Sandy Creek	None	•343	Vance County (Unincorporated Areas).
	Approximately 3.0 miles upstream of confluence with Sandy Creek.	None	•429	
Red Bud Creek	At the influence with Ruin Creek	None	•311	Vance County (Unincorporated Areas), City of Henderson.
	Approximately 1.8 miles upstream of the confluence of Red Bud Creek Tributary.	None	•362	
Red Bud Creek Tributary 1	At the confluence with Red Bud Creek	None	•313	Vance County (Unincorporated Areas).
	Approximately 1.8 miles upstream of the confluence with Red Bud Creek.	None	•375	
Ruin Creek	At the confluence with Tabbs Creek	None	•261	Vance County (Unincorporated Areas).
	Approximately 1.7 miles upstream of the confluence of Red Bud Creek.	None	•344	
Sandy Creek	Approximately 0.5 miles downstream of the confluence of Weaver Creek.	None	•298	
	Approximately 900 feet upstream of Highway 1	None	•448	

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Sandy Creek Tributary 11 ..	At the confluence with Sandy Creek	None	•403	Vance County (Unincorporated Areas), City of Henderson.
	Approximately 700 feet upstream of Route 1	None	•421	
Sandy Creek Tributary 12 ..	At the confluence with Sandy Creek Tributary 11	None	•415	City of Henderson.
	Approximately 0.4 miles upstream of the confluence of Sandy Creek Tributary 11.	None	•424	
Tabbs Creek	Approximately 2.0 miles upstream of the confluence of Tar River.	None	•237	
	Approximately 625 feet upstream of Old Watkins Road.	None	•285	
Weaver Creek	At the confluence with with Sandy Creek	None	•309	Vance County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Vickslow Road	None	•349	
Tar River	At the Franklin/Vance County boundary	•222	•228	Vance County (Unicorporated Areas).
	Approximately 800 feet upstream of Green Hill Road	None	•245	
Fishing Creek	At the Vance/Warren County boundary	None	•345	Vance County (Unincorporated Areas).
	Approximately 0.77 mile upstream of the County boundary.	None	•356	

Vance County (Unincorporated Areas)

Maps available for inspection at the Vance County Code Enforcement and Planning Department, 122 Young Street, Suite B, Henderson, North Carolina.

Send comments to Mr. J. Timothy Program, Chairman of the Vance County Board of Commissioners, 122 Young Street, Suite B, Henderson, North Carolina 27536.

City of Henderson:

Maps available for inspection at the Henderson City Hall, 180 South Beckford Drive, Henderson, North Carolina.

Send comments to The Honorable Robert G. Young, Jr., Mayor of the City of Henderson, P.O. Box 1434, Henderson, North Carolina 27536.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: February 3, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–3334 Filed 2–10–03; 8:45 am]

BILLING CODE 6718–04–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–D–7556]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Acting Chief, Hazard Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2878, or (e-mail) *Michael.Grimm@fema.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration, certifies that

this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)	
				Existing	Modified
Maine	Beals (Town), Washington County.	Atlantic Ocean	At Alley Point, approximately 2,700 feet west of the intersection of Black Duck Cove Road and Carver Industry Road.	*20	*14
			Approximately 800 feet southeast of the end of Black Field Road.	*25	*13
Maps available for inspection at the Beals Town Office, 11 Big Pond Road, Beals, Maine.					
Send comments to Mr. Velton Peabody, Chairman of the Town of Beals Board of Selectmen, PO Box 189, Beals, Maine 04611.					
Ohio	Gallia County (Incorporated Areas).	Chickamauga Creek	At U.S. Route 35	*569	*570
			Approximately 1600 feet upstream of U.S. Route 35.	*574	*575
		Tributary C	At confluence with Chickamauga Creek ..	*570	*571
			At Mitchell Extension	*599	*600
		Tributary D	At confluence with Tributary C	*574	*573
			Approximately 100 feet upstream of confluence with Tributary C.	*574	*573
Maps available for inspection at the Gallia County Offices, 18 Locust Street, Gallipolis, Ohio.					
Send comments to Mr. William J. Davis, Jr., President of the Gallia County Board of Commissioners, 18 Locust Street, Gallipolis, Ohio 45631.					
West Virginia.	Oceana (Town), Wyoming County.	Clear Fork	Approximately 330 feet downstream of corporate limits.	None	*1,239
			At upstream corporate limits	*1,295	*1,292
		Laurel Fork	At confluence with Clear Fork	*1,267	*1,265
			Approximately 80 feet upstream of corporate limits.	*1,299	*1,297
Maps available for inspection at the Oceana Town Hall, Route 10, Cook Parkway, Oceana, West Virginia.					
Send comments to The Honorable John Steffey, Mayor of the Town of Oceana, P.O. Box 190, Oceana, West Virginia 24870.					
West Virginia.	Smithers (Town), Fayette and Kanawha Counties.	Smithers Creek	Approximately 60 feet upstream of confluence with Kanawha River.	*627	*626
			Approximately 640 feet upstream of County Route 22.	*655	*652
Maps available for inspection at the Smithers Town Hall, 175 Michigan Avenue, Smithers, West Virginia.					
Send comments to The Honorable Eddie A. Long, Mayor of the Town of Smithers, P.O. Box 489, Smithers, West Virginia 25186.					
Wisconsin ...	Dane County (Unincorporated Areas).	Vermont Creek	Just upstream of the Sooline Railroad	*807	*810
			A point approximately 0.02 mile upstream of County Highway KP.	None	*814
Maps available for inspection at the Dane County City-County Building, 210 Martin Luther King Jr. Boulevard, Madison, Wisconsin.					
Send comments to Ms. Kathleen Falk, Dane County Executive, 210 Martin Luther Jr. Boulevard, Madison, Wisconsin 53703.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: February 3, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–3333 Filed 2–10–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI52

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Klamath River and Columbia River Distinct Population Segments of Bull Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the proposal to designate critical habitat for the Klamath River and Columbia River distinct population segments of bull trout (*Salvelinus confluentus*) to allow all interested parties additional time to comment on the proposed rule. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period, and will be fully considered in preparation of the final rule.

DATES: We will accept comments on the proposed critical habitat designation until the close of business (5 p.m. Pacific standard time) on May 12, 2003.

ADDRESSES: Written comments and information should be submitted to John Young, Bull Trout Coordinator, U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE. 11th Avenue, Portland, OR 97232. Written comments may also be sent by fax to 503/231–6243 or hand-delivered to our office at the above address. You may also send comments by electronic mail (e-mail) to: *R1BullTroutCH@r1.fws.gov.*

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours in the U.S. Fish and Wildlife Service Office at the above address. You may obtain copies of the proposed rule from the above address, by calling 503/231–6131, or from our Web site at: *http://species.fws.gov/bulltrout.*

FOR FURTHER INFORMATION CONTACT: John Young, at the address above (telephone 503/231–6131; facsimile 503/231–6243).

SUPPLEMENTARY INFORMATION:

Background

We published a proposed rule to designate critical habitat for the Klamath River and Columbia River distinct population segments of bull trout (Salvelinus confluentus) on November 29, 2002 (67 FR 71235). The proposed critical habitat designation includes approximately 29,720 kilometers (18,471 miles) of streams and 215,585 hectares (532,721 acres) of lakes, reservoirs, and marshes in Oregon, Washington, Idaho, and Montana. Designation would apply only to the waterways, not the adjacent lands. Under the terms of a court-approved settlement agreement, we are required to submit the final rule designating critical habitat to the **Federal Register** no later than October 1, 2003.

The 90-day comment period on the proposed designation of critical habitat originally closed on January 28, 2003. During that comment period, we received several letters requesting extension of the date for submitting comments. These requests cited the length and scope of the proposal as a key reason for needing additional time to gather information, conduct analyses, and prepare comments. We are re-opening the comment period in response to these requests.

Copies of the proposed designation of critical habitat are available on the Internet at *http://www.r1.fws.gov* or by contacting the Bull Trout Coordinator, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

Public Comments Solicited

We are reopening the comment period at this time in order to accept the best and most current scientific and commercial data available regarding the proposed critical habitat designation for the Klamath River and Columbia River distinct population segments of bull trout. Previously submitted comments on the proposed designation need not be resubmitted. We will accept written comments and information during this reopened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

You may mail or hand-deliver written comments and information to the Bull Trout Coordinator, U.S. Fish and Wildlife Service Office (*see* **ADDRESSES** section). Hand deliveries must be made during normal business hours.

You may also send comments by e-mail to: *R1BullTroutCH@r1.fws.gov.* If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include a return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our office at telephone number 503/872–2766, during normal business hours.

As described in the preamble of the proposed rule, we are conducting an analysis of the economic impacts of designating the proposed critical habitat. We will publish a notice of availability in the **Federal Register** when the draft economic analysis becomes available and provide for a 30 day comment period, during which we will accept comments on the proposal as well as the draft economic analysis. We anticipate publication of the notice of availability within this current 90 day extension. The notice of availability will provide for the comment period to remain open until the end of this current 90 day extension or 30 days after publication of the notice, whichever is later.

Author

The primary author of this notice is Barbara Behan, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: January 30, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–3369 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 012803C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that an EFP application from the University of New Hampshire (UNH) Cooperative Extension contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP), and does not detrimentally affect the well being of any stock of fish likely to be taken during the experiment. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for an exemption from the Gulf of Maine (GOM) Rolling Closure area restrictions, and for an exemption from the NE multispecies days-at-sea (DAS) notification requirements. The exempted fishing activity would support research to design, develop and test a soft species separation system for commercial flatfish trawls in the GOM. The system is intended to separate roundfish (particularly cod) from flatfish in trawl nets by exploiting behavioral differences between the species. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before February 26, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on UNH Species Separation System EFP Proposal.'' Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn, Fishery Management Specialist, 978–281–9326.

SUPPLEMENTARY INFORMATION: The application for an EFP was submitted by the UNH Cooperative Extension for research being funded through NMFS' Cooperative Research Partners Program. The applicant is requesting an exemption for one commercial vessel from the NE multispecies DAS notification requirements at 50 CFR 648.10(c) and 648.82(a) for 32 days of at-sea gear testing, and from the GOM Rolling Closure area restrictions specified at 50 CFR 648.81 for the same duration. Twelve (12) of the 32 days are carry-over from the first phase of the study which began in September 2002, and will be fished during the 2002 fishing year (through April 30, 2003). The remaining 20 days will be restricted to the 2003 fishing year (May 1, 2003 to April 30, 2004) and are the subject of this EFP request.

The objective of the research is to test a soft species separation system for the purposes of separating flatfish from roundfish in trawl nets and reducing the inadvertent bycatch of roundfish (particularly cod) when fishing for flatfish. The separation device is designed to separate roundfish from flatfish by exploiting behavioral differences that exist between the species. The experimental design consists of a trawl net with a soft species separation panel, or ramp, that would be positioned in front of a double codend. It would take advantage of the tendency of flatfish to swim towards the ocean bottom after encountering the separation panel and thereby into the lower codend portion of the net. Roundfish, which are not expected to swim towards the sea floor after encountering the panel, would swim into the upper codend portion of the net, which could be left open if roundfish were not being retained.

Underwater video equipment would be employed to observe fish behavior and functioning of the experimental selectivity device. Catch and bycatch are proposed to be sampled from each tow. If available, 100 each of cod, haddock, yellowtail flounder, whiting (silver hake), American plaice and witch flounder (including both legal and sub-legal sizes) would be measured from the catch in both the control net (commercial trawl net) and from the experimental trawl net, using alternating tows. The total weight of roundfish and flatfish would be determined from the upper and lower codends of the experimental trawl net, and from the control net. Finally, the catch of each species in the upper and lower codend of the experimental net would be analyzed using statistical methods to calculate a separation index to determine whether the experimental system is effective at separating the species.

The sea trials would be conducted in shallow water (30 to 50 fathoms (54.9 - 91.4 meters)) off the coasts of New Hampshire, southern Maine, and a small portion of northern Massachusetts. UNH researchers would be aboard the vessel during all experimental work. All undersized fish, and/or protected species, would be returned to the sea as quickly as possible after measurement. However, legal-sized fish that would otherwise have to be discarded would be allowed to be retained and sold. The overall catch levels are not expected to have a detrimental impact on the NE multispecies resource. Estimated total landings for the 32 days are: Cod - 9,600 lb (4354.5 kg); flatfish (witch flounder, American plaice, winter flounder, yellowtail flounder) - 9,600 lb (4354.5 kg); and other groundfish (haddock, cusk, white hake, silver hake, red hake, ocean pout, wolffish, etc.) - 6,400 lb (2903 kg). This is approximately one-half the level of landings that would be expected for 32 days of normal commercial fishing for this vessel. The participating vessel would be required to report all of its landings in its Vessel Trip Reports.

This experimental work is important because it could lead to the development of gear that could reduce the inadvertent bycatch of species that are subject to restrictive trip limits, such as cod, when fishing for species which are not subject to restrictive trip limits. The successful development of a soft species separation device could provide the fishing industry with more flexibility in conducting fishing activities, while simultaneously providing additional conservation for overfished species.

Based on the results of the EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 4, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. 03–3291 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030128023–3023–01; I.D. 011503D]

RIN 0648–AQ44

Fisheries of the Exclusive Economic Zone Off Alaska; Increase in Roe Retention Limit for Pollock Harvested in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to increase the percentage of pollock roe that may be retained by operators of catcher/processors and motherships processing pollock harvested in the Bering Sea and Aleutian Islands. The proposed increase is from 7 to 9 percent. This action is necessary because catcher/processors and motherships have been able to increase their pollock roe recovery rate since the passage of the American Fisheries Act (AFA) through cooperative fishing practices and more precise timing of fishing activity. When fishing conditions are ideal, the operators of catcher/processors and motherships have demonstrated that they can recover roe in excess of the current 7–percent roe retention limit that was implemented a decade ago to prevent roe stripping in the directed pollock fishery. This action is intended to be consistent with the environmental and socioeconomic objectives of the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act) and other applicable laws.

DATES: Comments on the proposed rule must be received on or before March 13, 2003.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or delivered to the Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK, and marked Attn: Lori Durall. Comments also may be sent by fax to 907–586–7557. Comments will not be accepted if submitted via email or the internet. Copies of the Categorical Exclusion and Regulatory Impact Review prepared for this action may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7650, or kent.lind@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

History of Roe Stripping Regulations

In 1990, the Council identified pollock roe stripping as a management problem in the groundfish fishery of the BSAI and submitted Amendment 14 to the FMP to prohibit the practice of roe stripping. The final rule to implement Amendment 14 published on January 7, 1991 (56 FR 492), established a 10–percent limit on the amount of pollock roe that could be retained on board a vessel relative to the round-weight equivalent of primary products retained on board the vessel during the same fishing trip.

In 1994, after receiving information that vessels were continuing to practice roe stripping on a limited basis by ''topping off'' with roe to achieve the 10–percent limit, NMFS lowered the maximum retainable percentage to 7 percent in a final rule published March 25, 1994 (59 FR 14121). In determining that 7 percent should be the applicable limit, NMFS reviewed 1993 roe recovery information from vessels that were operating during the roe pollock fishing season, which was conducted between January 20 and April 15. Data from 12 participating vessels, which produced 1,422 mt of pollock roe from 31,772 mt of retained pollock catch, show that the average roe recovery was 4.5 percent during the roe pollock fishing season. The highest roe recovery percentage achieved by any of the 12 vessels was 7.2 percent, and the lowest was 2.0 percent. Therefore, NMFS determined that a maximum allowable rate of 7 percent would minimize amounts of roe that might be discarded as a result of regulations, while still complying with the intent of Amendment 14 and the Magnuson-Stevens Act to prohibit roe stripping.

Since 1994, the BSAI pollock fishery has continued to evolve. On December 3, 1997 (62 FR 63880), NMFS issued a final rule to implement an improved retention/improved utilization (IR/IU) program under Amendment 49 to the FMP. Amendment 49 imposed a 100–percent retention requirement for vessels harvesting pollock in the directed pollock fishery. Under Amendment 49, catcher/processors and motherships must retain a primary product from each pollock brought on board the vessel during the directed pollock fishery. While this regulation was intended to address pollock discards, it also had the effect of tightening the prohibition on roe stripping because pollock roe by definition cannot be used as a primary product to meet the 100–percent retention standard.

Evolution of the BSAI Pollock Fishery Under the AFA

In 1998, Congress passed the AFA (Div. C, Title II, Pub. L. No. 105–277, 112 Stat. 2681 (1998)), which restricted participation in the BSAI pollock fishery to certain eligible vessels and processors, and authorized the formation of fishery cooperatives. Under the AFA, vessels in the BSAI pollock fishery have formed voluntary cooperatives that have eliminated the open access race for fish that characterized the BSAI pollock fishery before the AFA. Under these AFA cooperatives, participating catcher/processors and motherships have been able to dramatically improve product recovery rates by slowing down their operations, using more refined production techniques, and fishing more selectively. This increase in productivity under the AFA was examined in detail in the final Environmental Impact Statement prepared for AFA-related Amendments 61/61/13/8 to the FMPs for the groundfish, crab, and scallop fisheries off Alaska.

In addition to these general gains in productivity, catcher/processors and motherships have achieved higher roe recovery rates under the AFA through an increased ability to time their fishing activity to coincide with periods of peak roe recovery and through an increased ability to selectively target schools of large mature pollock. When circumstances are ideal, some catcher/processors and motherships have reached or exceeded the current 7–percent limit.

In 1999, the Council examined roe recovery rates by catcher/processors in the BSAI and concluded that sufficient rationale existed to raise the maximum retainable roe amount to 9 percent. After reviewing data on roe recovery rates,

NMFS agreed with the Council's rationale.

To determine the appropriate roe retention limit under the AFA, NMFS examined roe recovery information from the 2000, 2001, and 2002 roe seasons, which were managed under AFA cooperatives. During this time period, AFA catcher/processors and motherships processed 26,286 mt of pollock roe and 826,913 mt round-weight equivalent of primary pollock products for an aggregate roe recovery rate of 3.2 percent for the 2000–2002 roe seasons. However, during each of the 3 years, certain vessels were able to achieve roe recovery rates that exceeded 7 percent during weeks of peak roe recovery. In 2000, one catcher/processor achieved roe recovery rates of 8.0 and 9.0 percent during two reporting weeks in March. In 2001, seven catcher/processors exceeded the 7–percent limit during the week of March 24. During that week, these seven catcher/processors achieved an aggregate roe recovery rate of 8.4 percent. In 2002, only one catcher/processor exceeded the 7–percent limit, with a roe recovery rate of 8.3 percent during the week of March 17. During this 3–year time period, a 7–percent limit would have required that catcher/processors discard a total of 185.6 mt of roe product, or 61.9 mt annually.

This action also would affect non-AFA catcher/processors that engage in directed fishing for other groundfish species in the BSAI and encounter incidental catch of pollock. The maximum retainable percentage of pollock is 20 percent for vessels engaged in directed fishing for other groundfish species. Existing 100–percent retention requirements at 50 CFR 679.27 require vessels engaged in directed fishing for groundfish other than pollock to retain their incidental catch of pollock up to the 20–percent limit, and such vessels are also allowed to recover roe from their incidental catch of pollock. The proposed 9–percent roe retention limit also would govern the amount of pollock roe these vessels could retain. In 2001, 58 non-AFA catcher/processors retained and processed pollock in the BSAI. These 58 vessels processed a round-weight equivalent of 11,837 mt of primary pollock products and 199 mt of pollock roe. The roe retention rates of non-AFA catcher/processors ranged from zero to 5.5 percent with an average rate of 1.5 percent. From these data, NMFS concludes that non-AFA catcher/processors are less able to maximize pollock roe recovery than AFA catcher/processors.

Based on these data, NMFS has concluded that, when conditions for roe recovery are ideal in mid to late March, some catcher/processors are able to achieve recovery rates that exceed 7 percent and that 9 percent is a standard that is sufficiently high to accommodate these peak periods of roe recovery without forcing vessels to discard excess roe. NMFS considered and rejected the alternative of eliminating the roe retention limit for several reasons. First, the AFA cooperatives that have produced a more rationalized fishery are not permanently established in regulation. AFA cooperatives, which are voluntary organizations, could dissolve at any point in the future if the members no longer believe that remaining in cooperatives is in their interest. The fishery then could potentially return to a race for fish. Second, non-AFA catcher/processors engaged in directed fisheries for other species are required to retain incidental catch of pollock up to the 20–percent maximum retainable percentage. The 9–percent maximum retainable roe percentage is an additional measure to prevent such vessels from roe stripping, even though the practice is also prohibited by IR/IU regulations. Therefore, the Council and NMFS believe that maintaining a regulatory limit on roe retention is prudent to prevent the potential for a return to the practice of roe stripping in the event that the current AFA cooperatives choose to dissolve and to continue to limit the practice in non-AFA fisheries.

Elements of the Proposed Rule

This proposed rule would amend 50 CFR 679.20(g) by raising the maximum allowable roe retention percentage from 7 to 9 percent. For pollock harvested in the Gulf of Alaska (GOA), the maximum retainable percentage would remain at 7 percent. This distinction is made because the AFA applies only to the BSAI and the conditions that have led to an increase in roe recovery rates in the BSAI do not exist in the GOA. No other regulatory changes are proposed.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows: Two groups of vessels currently harvest pollock in the BSAI and retain roe product from the pollock harvested in the BSAI: (1) AFA catcher/processors and motherships that engage in directed fishing for pollock, and (2) non-AFA catcher/processors that encounter pollock as incidental catch in other fisheries.

Under the AFA, 21 catcher/processors and 3 motherships are eligible to engage in directed fishing for pollock in the BSAI. NMFS reviewed the size of these entities in the Environmental Impact Statement (EIS) prepared for AFA-related Amendments 61/61/13/8 to the fishery management plans for the groundfish, crab, and scallop fisheries off Alaska. The EIS concluded that all AFA-eligible catcher/processors are large entities under SBA size criteria because their annual receipts exceed $3.5 million. The 21 individual catcher/processors are owned by 12 companies with annual receipts that are estimated to range from $5 million for the smallest entity to several billion dollars for the largest entities. All three motherships engaged in the directed pollock fishery are also classified as large entities under SBA criteria because the companies that own these three motherships employ more than 500 individuals in their worldwide operations.

In 2001, 58 non-AFA catcher/processors harvested pollock incidentally while engaged in directed fishing for other species. Many of these vessels also retained pollock roe from their incidental catch of pollock. Although we do not have comprehensive knowledge of the ownership characteristics and gross receipts of the companies that own these 58 catcher/processors, we assume that many are small entities.

AFA catcher/processors and mothership production data from 2000–2001 indicate that roe recovery rates generally average between 3 and 5 percent. Vessels only rarely exceed the current 7 percent standard. From 2000–2002 the total annual production of roe in excess of 7 percent averaged 61.88 mt for the fleet, which represents 0.68 percent of the 9,166 mt average total annual roe production for those years. The effect of this action, therefore, is to allow catcher/processors and motherships to retain an additional 61.88 mt of pollock roe that existing regulations require to be discarded.

This action also would potentially affect non-AFA catcher/processors that engage in directed fishing for other groundfish species in the BSAI and encounter incidental catch of pollock. The maximum retainable percentage of pollock is 20 percent for vessels engaged in directed fishing for other groundfish species. Existing regulations at 50 CFR 679.27 require vessels engaged in directed fishing for groundfish other than pollock to retain their incidental

catch of pollock up to the 20–percent limit. Such vessels also are allowed to recover roe from their incidental catch of pollock. The proposed 9- percent roe retention limit would govern the amount of pollock roe these vessels could retain as well. In 2001, 58 non-AFA catcher/processors retained and processed pollock in the BSAI. These 58 vessels processed a round-weight equivalent of 11,837 mt of primary pollock products and 199 mt of pollock roe. The roe retention rates of non-AFA catcher/processors ranged from zero to 5.5 percent with an average rate of 1.5 percent. From these data, NMFS concludes that non-AFA catcher/processors are less able to maximize pollock roe recovery than AFA catcher/processors and, therefore, would gain no benefit, nor incur any cost, from increasing the maximum retainable roe percentage from 7 percent to 9 percent.

Certification of this action is appropriate because this proposed rule relieves a restriction and would result in no increased cost to any entity, small or large, and no adverse impacts on any entities. In addition, the only entities that are expected to benefit directly from this action are large entities. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: February 6, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57.

2. In § 679.20, paragraphs (g)(1)(i), (g)(4)(i)(B), and (g)(4)(ii)(B) are revised to read as follows:

§ 679.20 General limitations.

* * * * *

(g) * * *

(1) * * *

(i) Pollock roe retained on board a vessel at any time during a fishing trip must not exceed the following percentages of the total round-weight equivalent of pollock, as calculated from the primary pollock product on board the vessel during the same fishing trip:

(A) 7 percent in the Gulf of Alaska, and

(B) 9 percent in the Bering Sea and Aleutian Islands.

* * * * *

(4) * * *

(i) * * *

(B) To determine the maximum amount of pollock roe that can be retained on board a vessel during the same fishing trip, multiply the round-weight equivalent by 0.07 in the Gulf of Alaska or 0.09 in the Bering Sea and Aleutian Islands.

* * * * *

(ii) * * *

(B) To determine the maximum amount of pollock roe that can be retained on board a vessel during a fishing trip, add the round-weight equivalents together; then, multiply the sum by 0.07 in the Gulf of Alaska or 0.09 in the Bering Sea and Aleutian Islands.

* * * * *

[FR Doc. 03–3378 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 28
Tuesday, February 11, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHIP) will meet on Friday, February 21, 2003. The meeting will be held in the Pavilion Ballroom, U.S. Grant Hotel, 326 Broadway, San Diego, California, beginning at 8:30 a.m.

The ACHIP was established by National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, Federally assisted, and Federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHIP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, and Transportation; the Administrators of the Environment Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Major; a Native Hawaiian and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Presentation of Chairman's Awards for Federal Achievement in Historic Preservation
III. Report of the Executive Committee
  A. FY 2003 ACHIP Appropriation
  B. FY 2004 ACHIP Budget Request
  C. ACHIP Legislative Priorities for the 108th Congress
  1. ACHIP Reauthorization Legislation
IV. Presidential Initiatives
  A. Preserve America Program Development
  B. Preserving America's Heritage Executive Order Implementation
V. Report of the Preservation Initiatives Committee
  A. Federal Heritage Tourism Summit
  B. Historic Preservation Tax Incentives
VI. Report of the Federal Agency Programs Committee
  A. Security Requirements for Federal Buildings
  B. Surface Transportation Reauthorization Legislation
  C. Telecommunications Working Group Update
  D. Section 106 Cases
VII. Report of Communications, Education, and Outreach Committee
  A. Chairman's Historic Preservation Awards Criteria and Process
  B. ACHIP ''Tag Line''
VIII. Chairman's Report
  A. Land Transfer Ceremony, Raymond, Mississippi
IX. Executive Director's Report
X. New Business
XI. Adjourn

Note: The meetings of the ACHIP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, 202–606–8503, at least (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: February 5, 2003.

John M. Fowler,

Executive Director.

[FR Doc. 03–3368 Filed 1–10–03; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 5, 2003.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Debt Settlement Policies and Procedures.

OMB Control Number: 0560–0146.

Summary of Collection: Debt Collection Improvement Act (DCIA) of 1996 and 4 CFR part 102, Federal Claim Collection standard and other applicable regulation require each Federal agency to collect debts owed it, and to employ cost effective and efficient procedures and methods to identify, report and collect debts. Provisions under the Federal Claims Collection Standards and the DCIA allow the debtor upon receiving a notification letter and unable to pay debt owed to the Federal Government in one lump sum, to forward a written request and financial statement to the Farm Service Agency (FSA) and

Commodity Credit Corporation (CCC) for establishing an agreed repayment plan in the promissory note using form CCC–279, Promissory Note.

Need and Use of the Information: FSA will collect information on the debtor's assets, liabilities, income and expenses when a debtor requests to enter into an installment agreement to settle their debt. Based on that information a determination can be made on whether the debtor can pay the debt in one lump sum or an installment is necessary. Without this financial information FSA/CC would have no method of allowing debtors to pay their debts in installments while still ensuring that the government's financial interests are protected.

Description of Respondents: Individuals or households; Farms; Federal Government.

Number of Respondents: 250.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 125.

Farm Service Agency

Title: 7 CFR 1951–T Disaster Set-aside Program.

OMB Control Number: 0560–0164.

Summary of Collection: 7 CFR part 1951, subpart T, ''Disaster Set-Aside Program,'' used in support of the Farm Service Agency (FSA) Farm Loan Program (FLP). The Disaster Set-Aside Program (DSA) is made available through the authority granted by the Secretary of Agriculture under the Consolidated Farm and Rural Development Act (7 U.S.C. 1981a) (The Act). The set-aside program is designated to assist borrowers in financial distress that operated a farm or ranch in a political subdivision, typically a county that was declared or designated a disaster area. DSA allows eligible borrowers who are unable to make the payments to quickly eliminate their immediate financial stress. Under this program, FSA farm loan program borrowers can receive immediate financial relief by moving one annual installment for each loan to the end of the loan term. The installment set-aside may be the one due immediately after the disaster or, if that installment is paid to the neglect of other creditors or family living and operating expenses, then the next scheduled installment may be set-aside. FSA will collect information on the borrowers asset values, expenses and income.

Need and Use of the Information: The information is required of FSA farm borrowers and collected by FSA loan servicing officials to determine that disaster victims need payment relief and to support the approval of a set-aside request.

Description of Respondents: Farms; Individuals or households; Business or other for-profit.

Number of Respondents: 1855.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 7,595.

Risk Management Agency

Title: General Administration Regulations; Interpretations of Statutory and Regulatory Provisions.

OMB Control Number: 0563–0055.

Summary of Collection: Section 533 of the 1998 Research Act requires the Federal Crop Insurance Corporation (FCIC) to publish regulation on how FCIC will provide a final agency determination in response to certain inquiries. This section provides procedures when FCIC fails to respond in the established time, the interpretation of the request is considered correct for the crop year. It becomes necessary for the requester, or respondent, to identify himself so they can be provided a response and state his interpretation of the regulation for which he is seeking a final agency interpretation.

Need and Use of the Information: FCIC will use the requester's information to provide a response. The respondent detailed interpretation of the regulation is required to comply with the requirements of Sec. 533 of the 1998 Research Act and to clarify the boundaries of the request to FCIC. If the requested information is not collected with each submission, FCIC would not be able to comply with the statutory mandates.

Description of Respondents: Business or other for-profit; Farm.

Number of Respondents: 45.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 78.

Risk Management Agency

Title: Standard Reinsurance Agreement Plan of Qperations.

OMB Control Number: 0563–NEW.

Summary of Collection: The Federal Crop Insurance Act, Title 7 U.S.C. Chapter 36 Sec. 1508(k) authorizes the Federal Crop Insurance to provide reinsurance to insurance providers approved by FCIC that insure producers of any agricultural commodity under one or more plans acceptable to FCIC. The Standard Reinsurance Agreement is a financial agreement between FCIC and the company to provide subsidy and reinsurance on eligible crop insurance. The Plan of Operation provides the information the insurer is required to file for the initial and each subsequent reinsurance year.

Need and Use of the Information: FCIC uses the information as a basis for the approval of the insurer's financial and operational capability of delivering the crop insurance program and for evaluating the insurer's performance regarding implementation of procedures for training and quality control. If the information is not collected, FCIC would not be able to reinsure the crop business.

Description of Respondents: Business or other for-profit; Farms; Federal Government.

Number of Respondents: 18.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 8370.

Rural Business-Cooperative Service

Title: 1890 Land Grant Institutions: Rural Entrepreneurial Program Outreach Initiative.

OMB Control Number: 0570–0041.

Summary of Collection: The Rural Business Service mission is to improve the quality of life in rural America by financing community facilities and businesses, providing technical assistance and creating effective strategies for rural development. Funding has been allocated to support the Outreach Initiative developed to help future entrepreneurs and businesses in rural communities that have the most economic need. Funds are awarded on a competitive basis using specific selection criteria.

Need and Use of the Information: The information collected will be used to determine (1) eligibility; (2) the specific purpose for which the funds will be utilized; (3) time frames or dates by which activities surrounding the use of funds will be accomplished; (4) feasibility of the project; (5) applicants' experience in managing similar activities; and (6) the effectiveness and innovation used to address critical issues vital tot he development and sustainability of businesses. Without this information there would be no basis on which to award funds.

Description of Respondents: Business or other for-profit; Farms; State, Local or Tribal Government.

Number of Respondents: 18.

Frequency of Responses: Reporting: Quarterely.

Total Burden Hours: 762.

Rural Utilities Service

Title: 7 CFR Part 1724, Electric Engineering Architectural Services and Design Policies.

OMB Control Number: 0572–0118.

Summary of Collection: The Rural Electrification Act of 1936, 7 U.S.C. 901

et seq., gives authorization to the Rural Utilities Service (RUS) to make loans in several States and Territories of the United States for rural electrification and the furnishing and improving of electric energy to persons in rural areas. Title 7 CFR 1724 requires each borrower to select a qualified architect to perform certain architectural services and to use the designated form that provides for these services. The agency has developed standardized contractual forms used by borrowers to contract for services.

Need and Use of the Information: The information collected from the forms is on an as needed basis or when the individual borrower undertakes certain projects. The standardization of the forms by RUS has resulted in substantial savings to borrowers by reducing preparation of the documentation and the costly review by the government.

Description of Respondents: Business or other for-profit; Not-for-profit.

Number of Respondents: 81.

Frequency of Responses: Reporting: On occasion; Quarterly.

Total Burden Hours: 161.

Animal and Plant Health Inspection Service

Title: Animal Welfare—Guinea Pigs, Hamsters, and Rabbits.

OMB Control Number: 0579–0092.

Summary of Collection: The Laboratory Animal Welfare Act (AWA) enacted in 1966 and amended in 1970 and 1990 requires the U.S. Department of Agriculture to regulate the human care and handling of most warm-blooded animals used for research or exhibition purposes; sold as pets, or transported in commerce. The Animal and Plant Health Inspection Service (APHIS) has the responsibility for enforcing the Animal Welfare Act and its provisions. APHIS collects information and requires certain recordkeeping in order to review and evaluate program compliance by regulated facilities and ensures a workable enforcement system to carry out the requirements of the AWA. Specific information requirements relate to certifications of shipping containers used to transport guinea pigs, hamsters, and rabbits as well as the conditions (e.g., temperature) necessary during transport, and acclimation certificates.

Need and Use of the Information: APHIS collects information from regulated facilities including dealers, exhibitors, and research facilities, intermediate handlers and carriers, and from accredited veterinarians to ensure proper handling and care for guinea pigs, hamsters, and rabbits. Without this information, APHIS would be unable to detect violations and take appropriate actions consistent with the AWA.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,470.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 260.

Animal and Plant Health Inspection Service

Title: Importation of Gypsy Moth Host Materials from Canada.

OMB Control Number: 0579–0142.

Summary of Collection: The United States Department of Agriculture (USDA) is responsible for preventing plant diseases or insect pests from entering into the United States, preventing the spread of pests not widely distributed in the United States, and eradicating those imported pests when eradication is feasible. The Plant Protection Act authorizes the Department to carry out this mission. The regulations implementing these Acts are contained in Title 7 of the Code of Federal Regulations, Part 310: Foreign Quarantine Notices. The Plant Protection and Quarantine Division of USDA's Animal and Plant Health Inspection Service (APHIS) are responsible for ensuring that these regulations are enforced. Implementing these regulations is necessary in order to prevent injurious insect pests and plant diseases from entering into the United States, a situation that could produce serious consequences for U.S. agriculture. APHIS will collect information using phytosanitary certificates, certificates of origin, and signed statements from individuals both within and outside the United States.

Need and Use of the Information: APHIS will collect information to ensure that importing foreign logs, trees, shrubs, and other articles do not harbor plant or insect pests such as the gypsy moth. If the information is not collected it would cripple APHIS' ability to ensure that trees, shrubs, logs, and a variety of other items imported from Canada do not harbor gypsy moths.

Description of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Farms; State, Local or Tribal Government.

Number of Respondents: 2,146.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 81.

Agricultural Marketing Service

Title: Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products—Recordkeeping.

OMB Control Number: 0581–0110.

Summary of Collection: The Agricultural Marketing Act of 1946 directs the Department to develop programs that will provide and enable the marketing of agricultural products. One of these programs is the USDA voluntary inspection and grading program for dairy products where these dairy products are graded according to U.S. grade standards by a USDA grader. The dairy products to be graded may be identified with the USDA grade mark. Dairy processors, buyers, retailers, institutional users, and consumers have requested that such a program be developed to assure the uniform quality of dairy products purchased. In order for any service program to perform satisfactorily, there must be written guides and rules, which in this case are regulations for the provider and user.

Need and Use of the Information: The Agricultural Marketing Service will collect information to ensure that the dairy inspection program products are produced under sanitary conditions and buyers are purchasing a quality product. The information collected through recordkeeping are routinely reviewed and evaluated during the inspection of the dairy plant facilities for USDA approval. Without laboratory testing results required by recordkeeping, the inspectors would not be able to evaluate the quality of dairy products.

Description of Respondents: Business or other for-profit.

Number of Respondents: 487.

Frequency of Responses: Recordkeeping.

Total Burden Hours: 1,388.

Agricultural Marketing Service

Title: Regulations for Inspection of Eggs.

OMB Control Number: 0581–0113.

Summary of Collection: Congress enacted the Egg Products Inspection Act (21 U.S.C. 1031–1059) (EPIA) to provide a mandatory inspection program to assure egg products are processed under sanitary conditions, are wholesome, unadulterated, and properly labeled; to control the disposition of dirty and checked shell eggs; to control unwholesome, adulterated, and inedible egg products and shell eggs that are unfit for human consumption; and to control the movement and disposition of imported shell eggs and egg products that are unwholesome and inedible. Regulations developed under 7 CFR part 57 provide the requirements and guidelines for the Department and industry needed to obtain compliance. The Agricultural Marketing Service (AMS) will collect information using several forms. Forms used to collect

information to provide method for measuring workload, record of compliance and non compliance and a basis to monitor the utilization of funds.

Need and Use of the Information: AMS will use the information to assure compliance with the Act and regulations, to take administrative and regulatory action and to develop and revise cooperative agreements with the States, which conduct surveillance inspections of shell egg handlers and processors. If the information is not collected, AMS would not be able to control the processing, movement, and disposition of restricted shell eggs and egg products and take regulatory action in case of noncompliance.

Description of Respondents: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,004.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly.

Total Burden Hours: 1,749.

Food Safety and Inspection Service

Title: Consumer Data to Support Risk Assessments, Regulation Development, and Food Safety Education Initiatives.

OMB Control Number: 0583–NEW.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031–1056). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS will conduct a collection of information from U.S. consumers on their food safety practices, concerns, and awareness specific to meat, poultry, and egg products using the FSIS Consumer Survey. The data is needed to support the new administration's program improvement agenda, as well as protect the public health by significantly reducing the prevalence of food borne hazard from meat, poultry, and egg products.

Need and Use of the Information: FSIS will use the data collected in the consumer survey to improve: food safety risk assessment, food safety education campaigns, and product labeling. FSIS will also use the data to support its annual regulatory agenda. Without the data to improve the estimates for food safety risk assessments and data to better target food safety education campaigns, FSIS will have difficulty achieving its goals.

Description of Respondents: Individuals or households.

Number of Respondents: 2400.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 600.

Food and Nutrition Service

Title: Report of School Program Operations.

OMB Control Number: 0584–0002.

Summary of Collection: The Food and Nutrition Service (FNS) administers the National School Lunch Program, the School Breakfast Program, and the Special Milk Program as mandated by the National School Lunch Act, as amended, and the Child Nutrition Act of 1966, as amended. Information on school program operations is collected from state agencies on a monthly basis to monitor and make adjustments to State agency funding requirements. FNS uses form FNS–10 to collect data although 95 percent of the information is collected through electronic means.

Need and Use of the Information: FNS collects quantity information from State agencies on the number of meals served under the various food programs. Information is categorized in a number of areas and States are asked to provide their estimates along with actual data. FNS uses the information collected on school operations to assess the progress of the various programs and to make monthly adjustments to State agency funding requirements. If the information was not collected, FNS would be unable to monitor the proper use of program funds.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 62.

Frequency of Responses: Reporting: Monthly; Annually.

Total Burden Hours: 95,232.

Food and Nutrition Service

Title: Report of the Child and Adult Care Food Program.

OMB Control Number: 0584–0078.

Summary of Collection: The Child and Adult Care Food Program is mandated by section 17 of the National School Lunch Act, as amended. Program implementation is contained in 7 CFR part 226. The Food and Nutrition Service (FNS) collects information using Form FNS–44 to use in managing the Child and Adult Care Food Program. This report is vital since it is the only means by which FNS can obtain current information necessary to make payments to State agency letters of credit, and to plan for future levels of program funding.

Need and Use of the Information: FNS will collect information in order to analyze progress in the program and to make monthly adjustments to State agency funding requirements. If data is not collected, FNS would be unable to monitor the proper use of program funds.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Reporting: Quarterly: Semi-annually; Monthly.

Total Burden Hours: 5,724.

Food and Nutrition Service

Title: Monthly Claim for Reimbursement.

OMB Control Number: 0584–0284.

Summary of Collection: The Child Nutrition Act of 1966 requires that educational agencies disburse and appropriate funds during the fiscal year for the purposes of carrying out provisions of the Special Milk Program (SMP). The National School Lunch Act requires that State educational agency appropriated funds for any fiscal year for the purposes of fulfilling the earned reimbursement set forth in National School Lunch, Breakfast, and Special Milk Programs. The Food and Nutrition Service will use the monthly claim reimbursement form FNS–806A and 806B to fulfill the earned requirements identified in these programs, National School Lunch Program (NSLP), SMP, and the School Breakfast Program (SBP).

Need and Use of the Information: The information is collected electronically from school food authorities that participate in NSLP, School Breakfast Program (SBP), and SMP programs. The forms contain meal and cost data collected from authorized program participants. Also, these forms are an essential part of the accounting system used by the subject programs to ensure proper reimbursement. This information is collected monthly because of the constant fluctuation in school enrollment and program participation. Program participants would not receive the monthly reimbursement earned and the Agency would lose program accountability, if this information were collected less frequently.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 209.

Frequency of Responses: Record keeping; Reporting: Monthly.

Total Burden Hours: 1,735.

Food and Nutrition Service

Title: Disaster Food Stamp Program.

OMB Control Number: 0584–0336.

Summary of Collection: Section 5(h) of the Food Stamp Act of 1977 along

with other related legislative authorities of the Secretary of Agriculture to establish temporary emergency standards of eligibility for victims of a disaster so that food assistance can be obtained. This assistance becomes effective in areas designated as a ''major'' disaster in order to address temporary food needs of families affected. The Food and Nutrition Service (FNS) is delegated the responsibility to administer the program and State agencies handle enrollment and general operation. In order to determine whether an individual is eligible for emergency food stamp assistance an application form must be completed. The State agencies must comply with certain reporting requirements to reconcile the distribution of food stamps and account for discrepancies.

Need and Use of the Information: FNS, through the State agencies, will collect information from the public to ensure that individuals who apply for emergency food stamps are eligible. Without information from these individuals, there would be no means for establishing whether assistance is warranted. State reporting requirements are necessary in order to ensure that States are accountable for the food stamp coupons it maintains and to avoid fraud, waste, and abuse in the Food Stamp Program.

Description of Respondents: State, Local, or Tribal Government; Individuals or households.

Number of Respondents: 6.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 60.

Food and Nutrition Service

Title: Food Stamp Pre-Screening Tool.

OMB Control Number: 0584–NEW.

Summary of Collection: Consistent with Section 5 of the Food Stamp Act of 1977, the Food and Nutrition Service (FNS) has initiated this program to enable potential Food Stamp Program applicants to assess their eligibility and the order of magnitude of the potential benefit they may qualify for. This Pre-Screening Tool also enables citizen advocacy groups to help constituents assess their benefit eligibility. This will also help the Food Stamp Program fulfill its role as a means-tested program in accordance with Section 5 of the Food Stamp Act and part 273 of the Food Stamp Program regulations.

Need and Use of the Information: This Food Stamp Program Pre-Screening Tool will be accessible to the public as an online web-based system. The user will be prompted to enter household size, income, expenses and resource information, and the tool will calculate and provide the user with and estimated range of benefits that the household may be eligible to receive. This information will help FNS determine the degree and type of system usage as well as potential areas for further study.

Description of Respondents: Individuals or households; State, Local, or Tribal Government; Not-for-profit institutions.

Number of Respondents: 48,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 8,400.

Forest Service

Title: The Day Use on the National Forests of Southern California.

OMB Control Number: 0596–0129.

Summary of Collection: The Forest and Rangeland Renewable Resources Research Act of 1978 (Pub. L. 95–307, 92 Stat. 353, as amended; 16 U.S.C. 1600 *note*, 1641 *note*, 1641–1647) directs the Secretary of Agriculture to research the multiple uses and products, including recreation of forests and rangelands to facilitate their most effective use. Users of urban proximate National Forests in Southern California come from a variety of ethnic/racial, income, age, educational, and other socio-demographic categories. The activities pursued, sources utilized, and site attributes preferred are just some of the items affected by these differences. Additional information is needed for the managers of the National Forests in Southern California, in part to validate results and in part because of the continuously changing visitor population recreating on the National Forests of Southern California. Without this study the Forest Service (FS) personnel will be ill-equipped to handle management changes required in response to visitor needs and preferences. A direct benefit to the affected public is anticipated through improvements in customer service, more informed recreation management decisions, and increased attention to the diverse customers served by the National Forests. FS will collect information using a questionnaire and face-to-face interviews.

Need and Use of the Information: FS will collect information on gender, age, education, ethnic or racial group affiliation, *etc.* The information will be used to assist resource managers in their effective management of recreation activities in the region studied. The Wildland Recreation and Urban Cultures Project will use the information to further expand its information base on visitor characteristics, communication, and mitigation of depreciative behaviors, such as vandalism. If the information is not collected, resource managers will have to make species management decisions without the views of the recreating public, who will be impacted by many of those choices.

Description of Respondents: Individuals or households.

Number of Respondents: 600.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 150.

Forest Service

Title: Grazing Permit Administration Forms.

OMB Control Number: 0596–0003.

Summary of Collection: Domestic livestock grazing currently exist on approximately 90 million acres of National Forest Service (NFS) lands. This grazing is subject to authorization and administrative oversight by the Forest Service (FS). The information is required for the issuance and administration of grazing permits, including fee collections, on NFS lands as authorized by the Federal Land Policy and Management Act, as amended, and subsequent Secretary of Agriculture Regulation 5 U.S.C. 301, 36 CFR part 222, subparts A and C. The bills for collection of grazing fees are based on the number of domestic livestock grazed on national forest lands and are a direct result of issuance of the grazing permit. Information must be collected on an individual basis and is collected through the permit issuance and administration process. FS will collect information using several forms.

Need and Use of the Information: FS will collect information on the ownership or control of livestock and base ranch property; the need for additional grazing to round out year long ranching operations; and citizenship. The information collected is used by FS in administering the grazing use program on NFS lands. If information is not collected it would be impossible for the agency to administer a grazing use program in accordance with the statutes and regulations.

Description of Respondents: Farms; Business or other for-profit; Individuals or households.

Number of Respondents: 6,000.

Frequency of Responses: Reporting: Annually; Other (as needed basis).

Total Burden Hours: 2,300.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 03–3314 Filed 2–10–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–011N]

FSIS Procedures for Notification of New Technology

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing new procedures for meat and poultry official establishments, egg products official plants, and companies that manufacture and sell technology to official establishments and plants, to notify the Agency of any new technology intended for use in official establishments and plants, so that the Agency has an opportunity to decide whether the new technology requires a pre-use review. If a new technology could affect product safety, FSIS regulations, inspection procedures, or the safety of Federal inspection program personnel, FSIS will advise the firm that a pre-use review is necessary. The Agency will cancel FSIS Directive 10,700.1, ''Guidelines For Preparing and Submitting Experimental Protocols for In-Plant Trials of New Technologies and Procedures.'' ''Guidelines For Preparing Experimental Protocols for In-plant Trials of New Technologies and Procedures,'' and issue a revised directive. FSIS is requesting comments on these new procedures. The Agency believes that facilitation of the use of new technology represents an important means of improving the safety of meat, poultry, and egg products.

DATES: This notice is effective February 11, 2003. The Agency must receive comments by April 14, 2003.

ADDRESSES: Submit one original and two copies of written comments within the scope of the rulemaking to the FSIS Docket Room, Docket #00–011N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments submitted in response to this proposal will be available for public inspection in the Docket Room Office between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Guidance material for completing protocols will be available on the Internet at *http://www.usda.gov* and in the Docket Room.

FOR FURTHER INFORMATION: For further information contact Charles Edwards, Director, Technology Program Development Staff, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700; telephone (202) 205–0675, fax (202) 205–0080.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 1995, FSIS published a notice in the **Federal Register**, ''Guidelines for Preparing and Submitting Experimental Protocols for In-Plant Trials of New Technologies and Procedures'' (60 FR 27714). This notice stated that the Agency is encouraging industry technological innovation in the meat and poultry industry. At the same time, FSIS established a single entry point for in-plant research protocols.

With the issuance of the Pathogen Reduction/Hazard Analysis Critical Control Point (HACCP) System final rule (61 FR 38806) on July 25, 1996, the Agency shifted away from a command and control approach to one that gives industry greater flexibility to innovate in order to meet food safety requirements.

On October 20, 1999, FSIS published the Sanitation Requirements final rule (64 FR 56400), which was intended to make sanitation requirements less prescriptive and to allow for more innovation on the part of industry.

New technologies have resulted in significant improvements in the safety of meat and poultry in recent years. Steam vacuums, steam pasteurization, and antimicrobials are all examples of advances in food safety technology that have occurred in recent years. The Agency is desirous of seeing these kinds of advances continue.

Therefore, in the spirit of providing an opportunity for further technological advances and innovations, FSIS is establishing new, flexible procedures to actively encourage the development and use of new technologies in meat and poultry establishments and egg products plants. These new procedures provide for a central location in the Agency to handle new technology, instead of having program inspection personnel address individual instances and questions as they arise in establishments and plants. In addition, these procedures are designed to eliminate unnecessary delays and to establish uniform acceptance criteria to facilitate the application of new technology. By screening the initial notifications of new technology, FSIS will eliminate unnecessary submissions of protocols for pre-use review. Consequently, the Agency is announcing its procedures for submitting notifications of new technologies by the meat, poultry, and egg products industries. FSIS will also cancel FSIS Directive 10,700.1, ''Guidelines For Preparing Experimental Protocols for In-plant Trials of New Technologies and Procedures,'' and issue a revised directive to explain these new procedures to inspection program personnel.

FSIS defines ''new technology'' as new, or new applications of, equipment, substances, methods, processes, or procedures affecting the slaughter of livestock and poultry or processing of meat, poultry, or egg products. The Agency has a regulatory interest in a new technology if the new technology could affect product safety, inspection procedures, or inspection program personnel safety, or if it would require a waiver of a regulation. Substances used as new technology must also meet the requirements for safety and suitability under the Agency's food ingredient approval process. While FDA has the responsibility for determining the safety of food ingredients and additives, as well as prescribing safe conditions of use, FSIS has the authority to determine that new ingredients and new uses of ingredients are suitable for use in meat and poultry products.

Notification

It is important that establishments and plants that are interested in introducing new technology into their operations pursue the introduction in an appropriate manner. Failure to do so is likely to create delays in the introduction of the new technology and interruption in establishment or plant operations. Consequently, firms that are interested in using or selling a new technology should submit documentation to the FSIS Technology Program Development Staff (see address above), describing the operation and purpose of the new technology. The document should explain whether why the new technology will not:

- adversely affect the safety of the product,
- jeopardize the safety of Federal inspection program personnel, or
- interfere with inspection procedures.

The notification also should state whether the technology will require a waiver of any Agency regulation and, if it will, identify the regulation and explain why a waiver would be appropriate.

FSIS will make every effort to review the document and notify the firm within 60 calendar days as to whether the Agency needs to review the new technology, or whether the establishment, plant, or company may proceed to use or sell it. If FSIS

determines that the new technology will not have any of the effects listed above, the Agency will issue a letter of no objection to the use of the new technology to the firm.

If the establishment or plant proceeds with the use of the new technology before the 60 day period has expired or without receiving a no objection notice from FSIS, then the Agency will take appropriate action the product processed using the new technology could be deemed to be adulterated (*see, e.g.*, 21 U.S.C. 453(g)(4); 601(m)(4); and 1033(a)(4)).

If FSIS determines that the proposed use of the new technology could adversely affect product safety, interfere with FSIS inspection procedures, jeopardize the safety of inspection program personnel, or require a waiver of a regulation, then the Agency will so inform the firm. Following are two examples of new technologies that could adversely affect product safety, inspection procedures, inspection program personnel safety, or Agency regulations: A new technology that changed the line speeds for poultry would require a waiver to the regulations for a limited time to test the new technology (*see* 9 CFR 381.67 and 381.68). Devices capable of detecting and sorting contaminated carcasses might also alter the method of carcass presentation to inspection program personnel and thus probably require changes to current inspection procedures.

FSIS will advise the establishment, plant, or company of the information that it needs for full pre-use review of the new technology, including whether a pre-use review of the new technology, including an in-plant trial of the new technology is necessary. An in-plant trial is necessary when the Agency needs data to perform a more informed review of the new technology. If an in-plant trial is necessary, FSIS will request that the firm submit a protocol that is designed to collect relevant data to support the use of the new technology.

Firms that recognize that the use of their new technologyy will likely raise questions about its effects on could affect product safety, the safety of inspection program personnel, or inspection procedures, or that recognize that their new technology is not consistent with FSIS the regulations, may simply contact FSIS about developing information that the Agency will need to make an informed judgment on the new technology a protocol instead of first submitting a notification.

Pre-Use Review and Protocol

The protocol should contain , as applicable, the following information:

- A descriptive title and statement of purpose for the in-plant trial.
- The name of the sponsor and the name and address of the facility at which the trial is to be conducted.
- A description of the experimental design, including the methods for control of bias.
- Identification of the test subjects and control articles.
- The type and frequency of tests, analyses, and measurements to be made.
- The records to be maintained.
- A statement of the proposed statistical methods to be used to analyze the data that are to be generated in the study.
- A time period for the in-plant trial.
- Any applicable research data.
- Any prior approvals from other Federal agencies.

All changes in, or revisions of, an approved protocol must be approved by FSIS and be documented and maintained with the protocol.

If the in-plant trial requires a waiver of any provision of FSIS'' regulations, the submitter must request and obtain the waiver receive written permission from the Agency before proceeding. FSIS regulations (specifically 9 CFR 303.1(h), 381.3(b), and 590.10) authorize the Administrator to waive for limited periods any provisions of the regulations to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements. No waiver can be granted if the new technology conflicts with the provisions of the Federal Meat Inspection Act (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451, *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031, *et seq.*).

If, based on the in-plant trial, the submitter plans to petition FSIS for a change in the Agency's regulations to permit the use of the new technology, then the submitter should collect information that will assist the Agency in performing rulemaking analyses required by law and executive orders, such as Executive Order 12866 and the Regulatory Flexibility Act.

FSIS will expect the submitter to provide data throughout the duration of the in-plant trial for the Agency to examine. Data may take several forms: laboratory results, weekly or monthly summary production reports, and or evaluations from inspection program personnel. If, at any time, the Agency determines that the in-plant trial results in product being produced that presents an increased risk to food safety or to the safety of inspection program personnel safety, the trial will be suspended or ended.

If requested by FSIS, the submitter should provide an orientation session for employees of the establishment on each shift before the start of each in-plant trial. The Agency reserves the right to review all data collected and to conduct on-site observations during an in-plant trial.

At the conclusion of the in-plant trial, the establishment or plant will is expected to submit a final report to the Agency and, if applicable, a petition requesting rulemaking to change the pertinent provisions of the regulations. See FSIS Notice, ''FSIS Petition Submission and Review Procedures'' (58 FR 63570), published December 2, 1993. The Agency may extend the in-plant trial period pending action on the petition.

FSIS will review the final report on the in-plant trial. The Agency's evaluation of the final report could result in a decision to initiate rulemaking in response to a petition, a recommendation of additional in-plant trials, or either acceptance or rejection by FSIS of the use of the new technology.

If the Agency rejects the use of the new technology, the establishment or plant would have the option to submit a revised protocol to address any problems areas identified by FSIS. The Agency will then begin a new review of the revised protocol.

FSIS is requesting comment on these procedures.

Paperwork Analysis

Abstract: FSIS has reviewed the paperwork and recordkeeping requirements in this notice in accordance with the Paperwork Reduction Act and submitted an information collection request to the Office of Management Budget for emergency clearance. FSIS is publishing procedures for meat and poultry official establishments, egg products plants, and companies that manufacture and sell technology to official establishments to notify the Agency of new technology that they propose to use in meat and poultry establishments or egg products plants.

If the new technology could affect FSIS regulations, product safety, inspection procedures, or the safety of Federal inspection program personnel, then the establishment or plant would need to submit a written protocol to the Agency. As part of this process, the submitter will have be expected to conduct in-plant trials of the new

technology. The submitter will need to provide data to FSIS throughout the duration of the in-plant trial for the Agency to examine. Data may take several forms: laboratory results, weekly or monthly summary production reports, and evaluations from inspection program personnel.

Estimate of Burden: FSIS estimates that it will take 8 hours for establishments to answer all of FSIS'' questions for the notification of intent to use new technologies. If the notification involves the submission of a protocol for FSIS approval, FSIS estimates that this will take an additional 80 hours for the submitter to develop. For in-plant trials, FSIS estimates that the data collection and recordkeeping involved will take establishments 10 hours per week over an average of an 8-week (2-month) period.

Respondents: Meat, Poultry and Egg Products establishments, equipment manufacturers.

Estimated Number of Respondents: 250 requests for new technologies. 40 requests for new technologies that require a protocol.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5,440.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Specialist, Food Safety and Inspection Service, USDA, Room 109 Cotton Annex, Washington, DC 20250–3700.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the method and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond; including through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to John O'Connell, see the address above, and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the Internet at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the ''Constituent Update'' page on the Internet at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the ''Subscribe to the Constituent Update Listserv'' link, then fill out and submit the form.

Done at Washington, DC, on: February 6, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–3373 Filed 2–10–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Arizona Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Arizona Counties Resource Advisory Committee will meet in St. Johns, Arizona. The purpose of the meeting is to review possible projects for funding and approve evaluation criteria for the projects.

DATES: The meeting will be held February 7, 2003, at 1 pm.

ADDRESSES: The meeting will be held at the St. Johns Town Hall, 245 West 1st South, St. Johns, Arizona 85936. Send written comments to Robert Dyson, Eastern Arizona Counties Resource Advisory Committee, c/o Forest Service, USDA, P.O. Box 640, Springerville, Arizona 85938 or electronically to *rdyson@fs.fed.us*

FOR FURTHER INFORMATION CONTACT: Robert Dyson, Public Affairs Officer, Apache-Sitgreaves National Forests, (928) 333–4301.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring PL 106–393 related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Opportunity for public input will be provided.

Dated: January 14, 2003.

John C. Bedell,

Forest Supervisor, Apache-Sitgreaves National Forests.

[FR Doc. 03–3322 Filed 2–10–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Idaho Panhandle Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Idaho Panhandle National Forest's Idaho Panhandle Resource Advisory Committee will meet Friday, February 21, 2003 at 9:30 am in Coeur d' Alene, Idaho for a business meeting. The business meeting is open to the public.

DATES: February 21, 2003.

ADDRESSES: The meeting location is the Idaho Panhandle National Forest's Supervisor's Office, located at 3815 Schreiber Way, Coeur d' Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT: Ranotta K. McNair, Forest Supervisor and Designated Federal Official, at (208) 765–7369.

SUPPLEMENTARY INFORMATION: The meeting agenda will focus on reviewing project proposals for fiscal year 2003 and recommending funding for projects during the business meeting. The public forum begins at 1 pm.

Dated: February 4, 2002.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 03–3323 Filed 2–10–03; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a meeting of the Hawaii Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on April 11, 2003, at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, Hawaii 96814. The purpose of the meeting is to hold new member orientation, and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least 10 working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, February 4, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–3409 Filed 2–10–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a planning meeting of the Nevada Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 12 p.m. on March 21, 2003, at 3500 Lakeside Court, 2nd Floor, Reno, Nevada 89509. The purpose of the meeting is to discuss civil rights issues and update status of the Nevada Equal Rights Commission subcommittee efforts.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least 10 working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, February 4, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–3411 Filed 2–10–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing of the North Dakota Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4:30 p.m. on Thursday, February 27, 2003, at the Best Western Doublewood Inn, 1400 E. Interchange, Bismarck, North Dakota 58501. The purpose of the planning meeting with briefing is to review recent development regarding the establishment of civil rights organizations across the State. Briefing will be provided by selected state and local government officials; also by civil rights organizational leaders.

Persons desiring additional information, or planning a presentation to the Committee, should contact, John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least 10 working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, February 5, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–3410 Filed 2–10–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for emergency clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Agency: International Trade Administration (ITA).

Title: ITA Customer Satisfaction Survey.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: Emergency.

Burden Hours: 400 hours.

Number of Respondents: 1,600.

Average Hours Per Response: 15 minutes.

Needs and Uses: This information will be used for program improvement, strategic planning, allocation of resources within the organization, and the establishment of benchmark performance measures and trend data related to the Government Performance and Results Act (GPRA). Survey responses will be used to assess what services ITA clients need, when ITA clients first used a product or service and to what extent an ITA product or service has met the needs of a user.

Affected Public: Business or other for-profit organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: February 6, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3375 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Bureau: International Trade Administration.

Title: Participation Agreement, Trade Mission Application and Conditions of Participation.

Agency Form Numbers: ITA–4008P, ITA–4008P–1 and ITA–4008P–A.

OMB Number: 0625–0147.

Type of Request: Regular Submission.

Burden: 2,792 hours.

Number of Respondents: 7,500.

Avg. Hours Per Response: 20 minutes and 70 minutes.

Needs and Uses: The Department of Commerce's International Trade Administration (ITA) sponsors overseas trade promotion events in which U.S. companies display, demonstrate, and promote their goods and services in foreign markets. These events include trade fairs, trade and seminar missions, and catalogue shows. *Form ITA–4008P, Participation Agreement (PA),* is the vehicle by which individual firms agree to participate in ITA's trade promotion program, identify the products and/or services they intend to sell or promote, and record their required financial contribution to the Department of Commerce. Together with the relevant ''Conditions of Participation'' they form a contract between an individual firm and the U.S. Department of Commerce. *Form ITA–4008P–1, Trade Mission Application,* is used to solicit information only from those firms seeking to participate in Department of Commerce overseas trade missions covered by the Statement of Policy Governing Overseas Trade Missions of the Department of Commerce issued on March 3, 1997. The Secretary's policy statement concluded that companies that wish to be considered for participation on a trade mission must meet certain criteria and make certain certifications. The information collected permits the Department to determine the eligibility and appropriateness of a firm's participation relative to other applicants and to the participation criteria set out in the Secretary's policy statement. This information includes the name and title of the individual(s) participating in the mission, number of employees, U.S. content of the applicant's products, export experience of the firm, line of business, and objectives of participation. Together with the Form ITA–4008P, ''Participation Agreement'' and ITA–4008P–A, ''Conditions of Participation'', ITA–4008P–1, Trade Mission Application forms a contract between an individual firm and the U.S. Department of Commerce. For trade missions led by the Secretary of Commerce, a *Supplemental Form for Secretarial Trade Missions* is added to the trade mission application. For security purposes and to protect the safety and integrity of the trade mission and its participants, a background screening is conducted on each trade mission applicant. The information requested for security purposes is not used for any other purpose. The Secretarial Trade Mission Supplement also collects the type of business entity and date and state of formation. This information is used to assist in verifying the legitimacy of the company. Finally, the addendum includes a request for biographical and company information. This information may be used for promotional purposes.

Affected Public: Businesses or other for-profits.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution, NW., Washington, DC 20230 or via Internet at *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: February 6, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3376 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Housing Starts, Sales, and Completions

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 14, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Erica Filipek, Census Bureau, Room 2105, FOB 4, Washington, DC 20233–6900, (301) 763–5161.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the Survey of Housing Starts, Sales, and Completions, also known as the Survey of Construction (SOC), to collect monthly data on new residential construction from a sample of owners or builders. The Census Bureau uses the Computer-Assisted Personal Interviewing (CAPI) electronic questionnaires SOC–QI/SF.1 and SOC–QI/MF.1 to collect data on starts and completions dates of construction, physical characteristics of the structure (floor area, number of bathrooms, type of heating system, *etc.*), and if applicable, date of sale, sales price, and type of financing. The SOC program provides widely used measures of construction activity, including the economic indicators Housing Starts and Housing Completions, which are from the New Residential Construction series, and New Residential Sales.

We plan to request a three year extension of the expiration date with no changes to forms SOC–QI/SF.1 and SOC–QI/MF.1.

II. Method of Collection

The Census Bureau uses its field representatives to collect the data. The field representatives conduct interviews to obtain data.

III. Data

OMB Number: 0607–0110.

Form Number: SOC–QI/SF.1 and SOC–QI/MF.1.

Type of Review: Regular Review.

Affected Public: Individuals or households, business, or other for profit institutions.

Estimated Number of Respondents: 8,000.

Estimated Time Per Response: 1.092.

Estimated Total Annual Burden Hours: 8,734.

Estimated Total Annual Cost: The estimated cost to the respondent is $207,591 based on an average hourly pay for respondent to be $23.77. This estimate was taken from the Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics Survey for 2001.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 6, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–3377 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Notice of Final Results of Antidumping Duty Administrative Review, Final Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 7, 2002, the Department of Commerce (the Department) published the preliminary results of its third administrative review of the antidumping duty order on fresh Atlantic salmon from Chile. The review covers sixteen producers/exporters of the subject merchandise. The period of review (POR) is July 1, 2000, through June 30, 2001. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the Final Results of Review section.

EFFECTIVE DATE: February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker or Constance Handley, at (202) 482–1784 or (202) 482–0631, respectively; AD/CVD Enforcement, Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2002, the Department published in the **Federal Register** the preliminary results of the third administrative review of the antidumping duty order on fresh Atlantic salmon from Chile. *See Notice of Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile*, 67 FR 51182 (August 7, 2002) (*Preliminary Results*).

We invited parties to comment on the *Preliminary Results*. On October 3, 2002, we received case briefs from respondents Cultivadora de Salmones Linao Ltda. and Salmones Tecmar S.A. (collectively, Linao and Tecmar)[1], Pesquera Eicosal Ltda., (Eicosal), Los Fiordos, Ltda. (Los Fiordos), Marine Harvest (Chile) S.A., (Marine Harvest), Salmones Mainstream S.A. (Mainstream), Salmones Pacifico Sur S.A. (Pacifico Sur), Pesca Chile S.A. (Pesca Chile), and L.R. Enterprises.[2] On October 8, 2002, L.R. Enterprises filed an unsolicited, revised case brief with regard to Mainstream because its October 3 submission on Mainstream contained numerous inadvertent errors.

On October 10, 2002, we received rebuttal briefs from respondents Cultivos Marinos Chiloe, Ltda. (Cultivos Marinos), Eicosal, Linao and Tecmar, Mainstream, Marine Harvest, Pacifico Sur and L.R. Enterprises.

On October 15, 2002, the Department sent L.R. Enterprises a letter regarding its case brief on Mainstream, requiring the redaction of new factual information contained in the October 3 and 8 versions. On October 16, 2002, L.R. Enterprises submitted redacted versions of the October 3 and 8 versions of its case brief on Mainstream. At the hearing on October 17, 2002, the Department informed L.R. Enterprises that the versions submitted on October 16 still contained information that should have been redacted. The Department instructed L.R. Enterprises to re-submit its case brief on Mainstream with all of the appropriate information redacted by the close of business on October 18, 2002. L.R. Enterprises re-submitted the brief.

On October 22, 2002, Mainstream submitted a letter to the Department stating that the re-submitted, revised version filed by L.R. Enterprises on October 18 continued to contain new factual information that should have been redacted. Mainstream requested that, given that L.R. Enterprise's fourth attempt still contained new factual information, the Department reject as untimely filed L.R. Enterprise's October 18, 2002, submission. Mainstream also provided the Department with its own version of what the correctly redacted case brief should look like. On October 24, 2002, L.R. Enterprises filed a response to Mainstream's October 22, 2002, letter, in which it argued that its October 18 version was correctly redacted and that there was no longer any new factual information contained in the brief. L.R. Enterprises also included in its October 24 filing a revised version of the case brief, removing only the reference to new information contained in Exhibit 1. On October 25, 2002, the Department asked L.R. Enterprises to resubmit its case brief on Mainstream in compliance with the Department's specific redaction instructions contained within that letter. On October 28, 2002, L.R. Enterprises complied with the Department's request and submitted the revised version of its case brief on Mainstream.

Partial Rescission of the Antidumping Duty Administrative Review

Prior to the publication of the preliminary results in this review, respondent Salmones Unimarc S.A. (Salmones Unimarc) certified to the Department that it had not shipped subject merchandise to the United States during the POR. As described in the *Preliminary Results*, U.S. import

[1] Linao and Tecmar were collapsed in the third administrative review. *See* Preliminary Results at 51186.

[2] L.R. Enterprises is a domestic producer of subject merchandise with operations in Lubec, Maine.

statistics confirmed that the company had not shipped subject merchandise to the United States during the POR. Therefore, the Department preliminarily rescinded the review with respect to this company. No new information has come to the Department's attention in this regard since the publication of the preliminary results. Accordingly, we are rescinding the review with respect to Salmones Unimarc.

Scope of the Review

The product covered by this review is fresh, farmed Atlantic salmon, whether imported ''dressed'' or cut. Atlantic salmon is the species *Salmo salar*, in the genus *Salmo* of the family *salmoninae*. ''Dressed'' Atlantic salmon refers to salmon that has been bled, gutted, and cleaned. Dressed Atlantic salmon may be imported with the head on or off; with the tail on or off; and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the review. Examples of cuts include, but are not limited to: crosswise cuts (steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the ''pin bones'' in or out.

Excluded from the scope are (1) fresh Atlantic salmon that is ''not farmed'' (*i.e.*, wild Atlantic salmon); (2) live Atlantic salmon; and (3) Atlantic salmon that has been subject to further processing, such as frozen, canned, dried, and smoked Atlantic salmon, or processed into forms such as sausages, hot dogs, and burgers.

The merchandise subject to this review is classifiable under item numbers 0302.12.0003 and 0304.10.4093, 0304.90.1009, 0304.90.1089, and 0304.90.9091 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

The issues raised in the case briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum* to Faryar Shirzad, Assistant Secretary for Import Administration, from Bernard T. Carreau, Deputy Assistant Secretary (*Decision Memorandum*), which is hereby adopted by this notice. A list of the issues addressed in the *Decision Memorandum* is appended to this notice. The *Decision Memorandum* is on file in Room B-099 of the main Commerce building, and can also be accessed directly on the Web at ia.ita.doc.gov. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Determination to Revoke Order in Part

In accordance with section 351.222(b)(2) of the Department's regulations, we have determined to revoke the antidumping duty order as to Cultivos Marinos, Mainstream, Marine Harvest and Pacifico Sur. These companies have sold subject merchandise in commercial quantities at prices not below their respective normal values for three consecutive annual reviews. Moreover, our analysis of market conditions and other factors does not indicate that the order is otherwise necessary to offset dumping with respect to these companies. *See* Revocation Recommendation in the *Decision Memorandum*.

We have also determined to not revoke the order as to Eicosal and Linao and Tecmar. The Stolt Sea Farm Ltda. acquisition of Eicosal and subsequent affiliation and collapsing issues between Eicosal and Ocean Horizons Chile S.A.[3] lead the Department to conclude that continued imposition of the order is necessary to offset dumping by Eicosal. *See* Comment 8 of the *Decision Memorandum*. With regard to Linao and Tecmar, for the reasons outlined in a proprietary memo,[4] the Department has determined that the order is otherwise necessary to offset dumping by Linao and Tecmar.

Final Results of Review

As a result of our review, we determine that the following weighted-average margins exist for the period of July 1, 2000, through June 30, 2001:

Exporter/Manufacturer	Weighted-Average Margin Percentage
Andes	0.16 (*de minimis*)
Cultivos Marinos	0.10 (*de minimis*)
Eicosal	0.44 (*de minimis*)
Friosur	0.18 (*de minimis*)
Invertec	0.00
Linao and Tecmar	0.29 (*de minimis*)
Los Fiordos	0.04 (*de minimis*)
Mainstream	0.05 (*de minimis*)
Marine Harvest	0.13 (*de minimis*)
Multiexport	0.00
Ocean Horizons	0.07 (*de minimis*)
Pacifico Sur	0.00
Patagonia	0.01 (*de minimis*)
Pesca Chile	0.11 (*de minimis*)
Robinson Crusoe	0.06 (*de minimis*)

Assessment

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1) (2002), we have calculated an exporter/importer (or customer)-specific assessment rate for merchandise subject to this review. We will direct the Customs Service to assess such rates against the entered customs values for the subject merchandise on each of the importer's/customer's entries during the review period. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these final results of review.

Cash Deposits

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Tariff Act of 1930, as amended (the Act): (1) for all exporters/manufacturers covered by this review, the cash deposit rate will be the rate listed above, except where the margin is zero or *de minimis*, no cash deposit will be required; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 4.57 percent, the ''All Others'' rate established in the less-than-fair-value investigation. These deposit requirements shall remain in

[3] On July 3, 2001, Eicosal was fully acquired by Stolt, the parent company of Ocean Horizons.

[4] *See Final Determination to Revoke in Part the Antidumping Duty Order on Fresh Atlantic Salmon from Chile for Marine Harvest and Not to Revoke for Linao and Tecmar* memorandum to Bernard Carreau, Deputy Assistant Secretary, from Daniel O´ Brien and Salim Bhabhrawala, Case Analysts, dated February 3, 2003.

effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402 (f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

Comment 1: *Regulatory requirements for revocation*
Comment 2: *European Commission's initiation of a dumping investigation of fresh and frozen Atlantic salmon from Chile*
Comment 3: *Accuracy and propriety of the Department's revocation analysis*
Comment 4: *Production capacity*
Comment 5: *The use of fourth review data in the final results of the third review*
Comment 6: *Whether Eicosal's post-POI shipments were made in commercial quantities*
Comment 7: *Eicosal's sales to the United States*
Comment 8: *Stolt Sea Farm Ltda.'s (Stolt) post-POR acquisition of Eicosal*
Comment 9: *Pacifico Sur's U.S. prices and profitability*
Comment 10: *Whether the Department should consider Marine Harvest eligible for revocation*
Comment 11: *Whether the Department should find that Linao and Tecmar are a ''new entity'' for the purposes of its revocation analysis*
Comment 12: *Whether the Department should have placed a revocation analysis for Linao and Tecmar on the record of this review*
Comment 13: *Whether the Department should revise the monetary correction adjustment and financial expense ratio for Eicosal*
Comment 14: *Marine Harvest's CEP profit calculation*
Comment 15: *Marine Harvest's feed costs*
Comment 16: *Ministerial error contained in Linao's and Tecmar's preliminary results margin calculation program*
Comment 17: *Linao's and Tecmar's cash deposit rate*
Comment 18: *Whether Department should correct data errors made by Los Fiordos for the final results*

[FR Doc. 03–3405 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta from Turkey: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order in Part: Certain Pasta from Turkey.

SUMMARY: On August 7, 2002, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain pasta from Turkey. This review covers one exporter/producer of subject merchandise, Filiz Gida Sanayi ve Ticaret A.S. (Filiz). The period of review (POR) is July 1, 2000, through June 30, 2001. Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed in the section ''Final Results of Review.'' We are not revoking the antidumping order with respect to Filiz, because Filiz has not had three years of sales in commercial quantities at less than normal value. *See* the ''Determination Not to Revoke'' section of this notice.

EFFECTIVE DATE: February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or Alicia Kinsey, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3601 or (202) 482–4793, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2002, the Department published the preliminary results of its administrative review of the antidumping duty order on pasta from Turkey. *See Certain Pasta from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part*, 67 FR 51194 (August 7, 2002) (*Preliminary Results*). The review covers one manufacturer/exporter. The POR is July 1, 2000, through June 30, 2001. We invited parties to comment on our preliminary results of review. We received case briefs from Filiz and petitioners[1] on September 19, 2002. We received a rebuttal brief from Filiz on September 26, 2002. On December 2, 2002, the Department published a notice postponing the final results of this review until February 3, 2003 (67 FR 71534). The Department has conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the

[1] The petitioners are New World Pasta Co., Dakota Growers Pasta Co., Borden Foods Corporation, and American Italian Pasta Co.

merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope ruling to date:

On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann, Program Manager, to Richard Moreland, Deputy Assistant Secretary, Concerning Final Scope Ruling, dated May 24, 1999, in the case file in the Central Records Unit, main Commerce building, room B-099 (the CRU).

Determination Not to Revoke

In the *Preliminary Results* of this review, we found that because Filiz had not sold subject merchandise in the United Sates for three years in commercial quantities within the meaning of 19 CFR 351.222(e), Filiz did not qualify for revocation. *See Preliminary Results* at 51197. Neither Filiz nor petitioners commented on this issue in their case briefs. Thus, we determine not to revoke this order with respect to Filiz.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum for the Fifth Antidumping Duty Administrative Review (*Decision Memorandum*) from Bernard Carreau, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed on the Web at http://ia.ita.doc.gov. The paper copy and the electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We calculated the export price and normal value using the same methodology described in the *Preliminary Results*, except as follows:

- The home market insurance field (*i.e.*, INSURH) reported by Filiz was converted from metric tons to kilograms.
- The Department has corrected the packing cost for one control number reported in the cost of production database to reflect changes in the U.S. sales database.
- The home market discount field (*i.e.*, UMER2DISH) reported by Filiz was deleted from the margin calculation program.
- The brand field submitted by Filiz has been omitted as a model match criterion.

These changes are discussed in the relevant sections of the *Decision Memorandum*.

Final Results of Review

As a result of our review, we determine that the following weighted-average percentage margin exists for the period July 1, 2000, through June 30, 2001:

Manufacturer/exporter	Margin (percent)
Filiz Gida Sanayi ve Ticaret A.S.	0.00

Assessment Rate

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific assessment rates by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the order during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of pasta from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company is *de minimis* or zero and we will instruct Customs not to collect cash deposits; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 51.49 percent, the ''All Others'' rate established in the LTFV investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38545 (July 24, 1996). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX I

List of Comments and Issues in the Decision Memorandum

- Conversion of Filiz's Insurance Expense to Turkish Lira per Kilogram
- Clerical Error in Packing Cost in Filiz's Cost of Production (COP) Database
- Calculation of the Countervailing Duty (CVD) Field
- Inclusion of the Brand of Pasta in Product Match Characteristics
- Allowance of Certain Discounts on Filiz's Home Market Sales
- Adjustment of Filiz's COP to Reflect Actual Cost of Vitamins
- Revision of Filiz's COP to Reflect Verified Production Yields
- Revision of Filiz's COP to Reflect Depreciation Revaluation
- Clerical Errors Regarding Filiz's Foreign Exchange Gains and Losses

[FR Doc. 03–3282 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475–818]

Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Certain Pasta from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part.

SUMMARY: On August 9, 2002, the Department of Commerce published the preliminary results and partial rescission of the fifth administrative review and intent not to revoke the order in part, for the antidumping duty order on certain pasta from Italy. The review covers four manufacturers/exporters of the subject merchandise: (1) Pastificio Garofalo S.p.A. (''Garofalo''), (2) Italian American Pasta Company (''IAPC''), (3) Pastificio Guido Ferrara S.r.l. (''Ferrara'') and (4) Pastificio Fratelli Pagani S.p.A. (''Pagani''). The period of review (''POR'') is July 1, 2000, through June 30, 2001.

Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed in the section ''*Final Results of Review*'' below. For our final results, we have found that during the POR, Garofalo sold subject merchandise at less than normal value (''NV''). We have also found that IAPC, Ferrara, and Pagani did not make sales of the subject merchandise at less than NV (*i.e.*, they had ''zero'' or *de minimis* dumping margins). We have also determined not to revoke the antidumping duty order with respect to subject merchandise produced and also exported by Pagani.

EFFECTIVE DATE: February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Ledgerwood or Mark Young, AD/CVD Enforcement Office VI, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–3836 or (202) 482–6397, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2002, the Department published the preliminary results of administrative review of the antidumping duty order on certain pasta from Italy. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not to Revoke in Part: Certain Pasta from Italy*, 67 FR 51827 (August 9, 2002) (''*Preliminary Results*''). Although the Department initiated the review on seven companies, we rescinded the review for three of those companies (two companies withdrew their requests; we had previously revoked the order with respect to the third company). *See* Partial Rescission section of the *Preliminary Results* for a more detailed explanation. The review covers the remaining four manufacturers/exporters. The POR is July 1, 2000, through June 30, 2001. We invited parties to comment on our *Preliminary Results*. We received case briefs on September 19, 2002, from petitioners, Ferrara, Garofalo, IAPC, and Pagani. On September 26, 2002, petitioners, Ferrara, and Garofalo submitted rebuttal briefs. On November 22, 2002, the Department extended the deadline for the final results of this review until February 3, 2003. *See Certain Pasta From Italy and Turkey: Extension of Final Results of Antidumping Duty Administrative Reviews*, 67 FR 71534 (December 2, 2002).

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, or by Codex S.R.L.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''*HTSUS*''). Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton, Senior Analyst, Office of AD/CVD Office V, to Richard Moreland, Deputy Assist Secretary, ''Scope Ruling Concerning Pasta from Italy,'' dated August 25, 1997, which is on file in the Central Records Unit (CRU), room B-099 of the main Commerce Department Building.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti-circumvention investigation of Barilla, an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997 (62 FR 65673). On October 5, 1998, the Department issued its final determination that Barilla's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(b). *See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann, Program Manager, Office of AD/CVD Enforcement VI, to Richard Moreland, Deputy Assistant Secretary, ''Final Scope Ruling,'' dated May 24, 1999, which is available in the CRU.

The following scope ruling is pending:

(5) On April 27, 2000, the Department self-initiated an anti-circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti-circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000).

Intent Not to Revoke Order

For the reasons outlined in the ''Issues and Decision Memorandum'' (''Decision Memorandum'') from Bernard Carreau, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 3, 2002, which is hereby adopted by this notice, we have determined not to revoke the antidumping duty order with respect to subject merchandise produced and also exported by Pagani because Pagani failed to demonstrate that for three consecutive years it sold the subject merchandise to the United States in commercial quantities in accordance with 19 CFR 351.222(e).

Use of Facts Available

Ferrara did not provide the Department with cost of production and constructed value information regarding two sales of tricolor pasta which did not have matches in the home market database. Consequently, in the *Preliminary Results*, we applied facts available (FA) to determine Ferrara's dumping margin. *See* the July 31, 2002 Analysis Memorandum for Pastificio Guido Ferrara s.r.l. Pursuant to section 776(a)(2)(A) of the Act, we have continued to apply FA to determine Ferrara's dumping margin in the final results. *See* Decision Memorandum, Comment 16, for further details.

Analysis of Comments Received

All issues raised in the case and rebuttal brief by parties to this administrative review are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Bernard Carreau, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is attached to this notice as an Appendix. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period July 1, 2000, through June 30, 2001:

Manufacturer/exporter	Margin (percent)
Italian American Pasta Company (IAPC)	0.14
Pastificio Guido Ferrara S.r.l. (Ferrara)	0.38
Pastificio Garofalo S.p.A. (Garofalo)	0.55
Pastificio Fratelli Pagani S.p.A. (Pagani)	0.00

Assessment

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. In situations in which the importer-specific assessment rate is above *de miminis*, we will instruct Customs to assess antidumping duties on that importer's entries of subject merchandise. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the order during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates shown above, except where the margin is *de minimis* or zero we will instruct Customs not to collect cash deposits; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.26 percent, the ''All Others'' rate established in the less than fair value investigation. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties or

countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX I

List of Comments and Issues in the Decision Memorandum

List of Issues:

Pagani

Comment 1. Revocation

IAPC

Comment 2. Unit of Measure Used in Calculation of Foreign Unit Price in Dollars
Comment 3. Use of Special Charges in the Calculation of U.S. Net Price
Comment 4. Application of Month Identifiers for U.S. and Home Market Sales
Comment 5. Calculation of Variables Used in CEP Profit

Garofalo

Comment 6. Affiliation between Garofalo and Amato
Comment 7. Exclusion of Home Market Sales Outside the Course of Ordinary Trade
Comment 8. Garofalo's Product Classification
Comment 9. Bank Charges for U.S. Sales
Comment 10. U.S. International Freight
Comment 11. Warranty Expenses Offset
Comment 12. Programming Errors
Comment 13. Home Market Commissions
Comment 14. Appropriate Handling of Entries from Certain Importers
Comment 15. Offset of Export Subsidies

Ferrara

Comment 16. The Department's Application of Facts Available
Comment 17. Product Matching Criteria
Comment 18. CVD Adjustment

[FR Doc. 03–3402 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms from India: Final Results of Changed-Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed-Circumstances Review.

SUMMARY: On December 24, 2002, the Department of Commerce published a notice of initiation and preliminary results of changed-circumstances review of the antidumping duty order on certain preserved mushrooms from India, in which it preliminarily determined that KICM (MADRAS) Limited is the successor-in-interest to Hindustan Lever Limited for purposes of determining antidumping duty liability. The Department is now affirming its preliminary results.

EFFECTIVE DATE: February 11, 2003.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Tinna E. Beldin, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4136 or 482–1655, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department of Commerce (''Department'') published in the Federal Register an amended final determination and antidumping duty order on certain preserved mushrooms from India (64 FR 8311), which included a cash deposit rate for Ponds India Limited (''Ponds''). In the course of the first administrative review, the Department noted that Ponds had become Hindustan Lever Limited (''HLL''). *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 66 FR 42507, 42508 (August 13, 2001). On October 17, 2002, HLL submitted a request that the Department initiate a changed-circumstances review to confirm that its wholly-owned subsidiary, KICM (MADRAS) Limited, is its successor-in-interest and should be entitled to the same cash deposit rate. The Department determined that HLL's request was incomplete and could not serve as a basis to initiate a changed-circumstances review. *See* Letter from Department to HLL Re: Certain Preserved Mushrooms from India: Request for Changed-Circumstances Review (October, 28, 2002). On November 6, 2002, HLL submitted supplemental information and documentation, and renewed its request that the Department conduct a changed-circumstances review to determine whether KICM should receive the same antidumping duty treatment as HLL with respect to the subject merchandise.

On December 24, 2002, we published a notice of initiation and preliminary results of changed-circumstances review (67 FR 78416) in which we preliminarily found that KICM is the successor-in-interest to HLL for purposes of determining antidumping duty liability. We received no comments.

Scope of the Order

The product covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) all other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order are classifiable under subheadings 2003.10.0027, 2003.10.0031,

2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

Final Results

As we received no comments on the preliminary results, for the reasons stated in the preliminary results (67 FR 78416) and based on the facts of record, we find KICM to be the successor-in-interest to HLL. Therefore, the Department is assigning KICM the same cash deposit rate (*i.e.*, 4.29 percent) as its predecessor HHL. This cash deposit rate is effective for all shipments of the subject merchandise from KICM entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this changed-circumstances review.

We are issuing and publishing this determination and notice in accordance with sections 751(b) and 777(i)(1) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.216 (2002).

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3404 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–878]

Saccharin from the People's Republic of China: Postponement of Final Determination of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley (Suzhou Fine Chemicals Group Co., Ltd.) at (202) 482–3148, and Javier Barrientos (Shanghai Fortune Chemical Co., Ltd.) at (202) 482–2243; Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 735(a)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final determination regarding sales at less than fair value (LTFV) in an investigation within 75 days after the date of its preliminary determination. However, section 735(a)(2) of the Act states that the Department may postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, if, in the case of a proceeding in which the preliminary determination was affirmative, a request in writing for such a postponement is made by exporters who account for a significant portion of the exports of subject merchandise. Section 351.210(e)(2) of the Department's regulations further states that the exporter must also request that the Department extend the provisional measures from a four-month period to a period of not more than six months.

Background

On July 31, 2002, the Department initiated an investigation to determine whether imports of saccharin are being, or are likely to be, sold in the United States at LTFV (67 FR 51536 (August 8, 2002)). On August 30, 2002, the International Trade Commission (ITC) published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of saccharin from the PRC. *See Saccharin from China,* 67 FR 55872 (August 30, 2002). On December 27, 2002, the Department published its preliminary determination in this investigation. *See Notice of Preliminary Determination of Sales at Less than Fair Value: Saccharin from the People's Republic of China,* 67 FR 79049 (December 27, 2002). On December 31, 2002, the two respondents selected in this investigation, Shanghai Fortune Chemicals Co., Ltd. and Suzhou Fine Chemicals Group Co., Ltd., as well as Kaifeng Xinghua Fine Chemical Factory, requested that the Department postpone the final determination. On January 7, 2003, the same parties requested that the Department extend the provisional measures period from four months to a period not longer than six months.

Postponement of Final Determination

Given the fact that the Department made an affirmative preliminary determination and exporters/producers of subject merchandise accounting for a significant portion of the exports during the period of investigation requested postponement and also asked that the Department extend the provisional measures from a four-month period to a period of not more than six months, as required by the Department's regulations, we are postponing the final determination until no later than May 12, 2003 (*i.e.*, 135 days after the publication of the preliminary determination; however, since May 11, falls on a weekend, the due date will fall on the next business day, May 12). This extension is in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(g).

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 03–3403 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–817]

Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination in the less-than-fair-value investigation of silicon metal from the Russian Federation.

SUMMARY: We determine that silicon metal from the Russian Federation (''Russia'') is being, or is likely to be, sold in the United States at less than fair value. On September 20, 2002, the Department of Commerce published a notice of preliminary determination of sales at less than fair value in the investigation of silicon metal from Russia. *See Notice of Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination: Silicon Metal from the Russian Federation*, 67 FR 59253 (September 20, 2002) (''*Preliminary Determination*''). This investigation covers two manufacturers of the subject merchandise. The period of investigation (''POI'') is July 1, 2001, through December 31, 2001.

Based upon our verification of the data and analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination of this investigation differs from the preliminary determination. The final weighted-average dumping margin is listed below in the section titled ''Continuation of Suspension of Liquidation.''

EFFECTIVE DATE: February 11, 2003.

FOR FURTHER INFORMATION CONTACT: James Doyle or Cheryl Werner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0159 and (202) 482–2667, respectively.

Background

This investigation was initiated on March 27, 2002. *See Notice of Initiation of Antidumping Duty Investigation: Silicon Metal from the Russian Federation*, 67 FR 15791 (April 3, 2002) (''*Notice of Initiation*''). The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Notice of Initiation.* The Department received no comments on product coverage from interested parties.

On August 27, 2002, the Department determined that Pultwen Ltd. (''Pultwen'') and a U.S. trading company were affiliated through a principal/agent relationship. *See Memorandum For Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III: Antidumping Investigation of Silicon Metal from Russia; Affiliation Memorandum of Pultwen Limited and U.S. Trading Company*, dated August 27, 2002 (''*Affiliation Memo for Pultwen and U.S. Trading Company*''). On August 28, 2002, we again requested that ZAO Kremny (''Kremny'')/Sual-Kremny-Ural Ltd. (''SKU'') and Pultwen provide their affiliated U.S. trading company's sales and received their response on September 4, 2002. On September 13, 2002, Kremny/SKU and Pultwen submitted an unsolicited additional response to the Department's August 28, 2002, request for the affiliated U.S. trading company's sales. On October 2, 2002, Kremny/SKU and Pultwen submitted an untimely response by their affiliated U.S. trading company to Section C of the Department's antidumping questionnaire and a revised U.S. sales listing which included sales of silicon metal made by the U.S. trading company to its U.S. customers. On October 18, 2002, petitioners submitted comments on the untimely U.S. sales data. On October 31, 2002, the Department rejected the October 2, 2002, response submitted by Kremny/SKU and Pultwen, because it was untimely filed factual information pursuant to 19 CFR 351.302 (d) of the Department's regulations.

On September 26, 2002, Kremny/SKU and Pultwen submitted a request for a hearing pursuant to Section 351.310(c). On September 30, 2002, Bratsk Aluminum Smelter (''BAS'') and Rual Trade Limited (''RTL'') submitted a request for a hearing and on October 18, 2002, petitioners also submitted a request for a hearing.

On September 27, 2002, the Department received a joint submission from BAS, RTL, Kremny/SKU, and Pultwen providing additional surrogate country factor values pursuant to Section 351.301(c)(3)(i). On November 27, 2002, we also received a joint submission from BAS, RTL, Kremny/SKU, and Pultwen providing surrogate country factor values. On December 9, 2002, petitioners submitted additional surrogate country factor values.

On October 9, 2002, through October 11, 2002, the Department conducted a factors of production verification of Kremny. *See Memorandum from Carrie Blozy and Catherine Bertrand, Case Analysts, to the File: Verification of Factors of Production for ZAO Kremny (''Kremny'') plant in the Antidumping Duty Investigation of Silicon Metal from the Russian Federation*, (December 4, 2002) (''*Kremny Verification Report*''). On October 31, 2002, through November 1, 2002, the Department conducted a U.S. sales verification of Pultwen *See Memorandum from James C. Doyle, Program Manager, and Cheryl Werner, Case Analyst, to the File: Verification of U.S. Sales for Pultwen Ltd. (''Pultwen'') in the Antidumping Duty Investigation of Silicon Metal from the Russian Federation*, (December 4, 2002) (''*Pultwen Verification Report*'').

On October 23, 2002, through October 25, 2002, the Department conducted a factors of production verification of BAS. *See Memorandum from James C. Doyle, Program Manager, and Cheryl Werner, Case Analyst, to the File: Verification of Factors of Production for Bratsk Aluminum Smelter (''BAS'') in the Antidumping Duty Investigation of Silicon Metal from the Russian Federation*, (December 5, 2002) (''*BAS Verification Report*''). On October 28, 2002, through October 29, 2002, the Department conducted a U.S. sales verification of RTL. *See Memorandum from James C. Doyle, Program Manager, and Cheryl Werner, Case Analyst, to the File: Verification of U.S. Sales for Rual Trade Limited (''RTL'')* (December 5, 2002) (''*RTL Verification Report*'').

We invited parties to comment on our *Preliminary Determination.* On December 17, 2002, petitioners, BAS and RTL, and Kremny/SKU and Pultwen submitted case briefs with respect to the sales and factors of production verifications and the Department's *Preliminary Determination.* Petitioners, BAS and RTL, and Kremny/SKU and Pultwen submitted their rebuttal briefs on December 24, 2002, with respect to the sales and factors of production verifications and the Department's *Preliminary Determination.* On January 7, 2003, the Department held a public hearing in accordance with 19 CFR 351.310(d)(1). Representatives for petitioners, BAS and RTL, and Kremny/SKU and Pultwen were present. All parties present were allowed an opportunity to make affirmative presentations only on arguments included in that party's case briefs and were also allowed to make rebuttal presentations only on arguments included in that party's rebuttal brief.

On January 28, 2003, the Department placed publicly available surrogate value data for petroleum coke on the record. The Department provided all parties an opportunity to comment on this value. On January 30, 2003, the Department received comments from BAS and RTL and petitioners.

Additionally, on February 3, 2003, the Department continued to find Pultwen and the U.S. trading company were affiliated. *See Memorandum For Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III: Antidumping Investigation of Silicon Metal from Russia; Final Affiliation Memorandum of Pultwen Limited and U.S. Trading Company*, dated February 3, 2003 (''*Final Affiliation Memo*'').

The Department has conducted and completed the investigation in accordance with section 735 of the Act.

Scope of Investigation

For purposes of this investigation, the product covered is silicon metal, which generally contains at least 96.00 percent but less than 99.99 percent silicon by weight. The merchandise covered by this investigation also includes silicon metal from Russia containing between 89.00 and 96.00 percent silicon by weight, but containing more aluminum than the silicon metal which contains at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal currently is classifiable under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (''HTSUS''). This investigation covers all silicon metal meeting the above specification, regardless of tariff classification.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs to this investigation are addressed in the *Issues and Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, to Faryar Shirzad, Assistant Secretary* (February 3, 2003) (''*Decision Memo*''), which is hereby adopted by this notice. A list of

the issues which parties have raised and to which we have responded, and other issues addressed, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the Decision Memo, a public memorandum which is on file at the U.S. Department of Commerce, in the Central Records Unit, in room B–099. In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the *Decision Memo* are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification, and analysis of comments received, we have made adjustments to the calculation methodology in calculating the final dumping margin in this proceeding. *See Analysis Memorandum of Bratsk Aluminum Smelter and Rual Trade Limited: Final Determination in the Less Than Fair Value Investigation of Silicon Metal from the Russian Federation* (February 3, 2003) (''*BAS and RTL Final Analysis Memo*''). Also, *see Analysis Memorandum of ZAO Kremny/Sual-Kremny-Ural Ltd. and Pultwen Ltd.: Final Determination in the Less Than Fair Value Investigation of Silicon Metal from the Russian Federation* (February 3, 2003) (''*Kremny/SKU and Pultwen Final Analysis Memo*'').

Verification

As provided in section 782(i) of the Act, we verified the information submitted by BAS and RTL and Kremny/SKU and Pultwen for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by BAS and RTL and Kremny/SKU and Pultwen. For changes from the *Preliminary Determination* as a result of verification, *see BAS and RTL Final Analysis Memo* or *Kremny/SKU and Pultwen Final Analysis Memo.*

Nonmarket Economy Country

On June 6, 2002, the Department revoked Russia's status as a non-market economy (''NME''), effective April 1, 2002. *See Memorandum from Albert Hsu, Barbara Mayer, and Christopher Smith through Jeffrey May, Director, Office of Policy, to Faryar Shirzad, Assistant Secretary, Import Administration: Inquiry into the Status of the Russian Federation as a Non-Market Economy Country under the U.S. Antidumping Law,* dated June 6, 2002. Because the period of investigation pre-dates the effective date of the Department's determination, we are continuing to utilize the NME methodology in this investigation. Should an antidumping order be issued in this case, the NME antidumping duty rates will remain in effect until they are changed as a result of a review, pursuant to section 751 of the Act, of a sufficient period of time after April 1, 2002.

Separate Rates

In our *Preliminary Determination,* we found that the respondents had met the criteria for the application of separate antidumping duty rates. We have not received any other information since the Preliminary Determination which would warrant reconsideration of our separates rates determination with respect to the respondents. Therefore, we continue to find that the respondents should be assigned individual dumping margins. For a complete discussion of the Department's determination that the respondents are entitled to separate rates, see the Preliminary Determination.

Russia-Wide Rate

For the reasons set forth in the *Preliminary Determination,* we continue to believe that use of adverse facts available for the Russia-wide rate is appropriate. *See Preliminary Determination.*

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Thus, pursuant to section 776(a) of the Act, the Department is required to apply, subject to section 782(d), facts otherwise available. Pursuant to section 782(e), the Department shall not decline to consider such information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as the facts otherwise available. The statute also provides that such an adverse inference may be based on secondary information, including information drawn from the petition, a final determination in an investigation, any previous administrative review, or any other information placed on the record.

In the *Preliminary Determination,* the Department applied total facts available for the Russia-wide rate using BAS's calculated margin, as it was the highest margin. For the final determination, BAS's calculated margin is less than the margin in the petition. Section 776(b) of the Act also provides that an adverse inference may include reliance on information from the petition. See also Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316 at 870 (1994) (''SAA''). Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' such as the petition, the Department shall to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA states that ''corroborate'' means to determine that the information used has probative value. *See* SAA, at 870. The petitioners' methodology for calculating the EP and NV, in the petition, is discussed in the initiation notice. To corroborate the petitioners' EP calculations, we compared the prices in the petition to the prices submitted by respondents for silicon metal. Based on a comparison of the U.S. Census Bureau's official IM–145 import statistics with the average unit values in the petition, we find the export price suggested in the petition to be consistent with those statistics. To corroborate the petitioners' NV calculation, we compared the petitioners' factor consumption data to the data reported by respondents and found them to be similar. Finally, we valued the factors in the petition using the surrogate values we selected for the final determination. However, by using the surrogate values we selected for the final determination, the petition margin is lower than BAS's calculated margin. Therefore, for the final determination, we have continued to apply total facts

available for the Russia-wide rate using BAS's calculated margin for the final determination.

Also in the *Preliminary Determination,* for Kremny/SKU, we applied partial facts available for the quantity of unreported sales by the U.S. trading company. We continue to find partial facts available are appropriate for valuing the quantity of unreported sales by the U.S. trading company and will continue to apply partial adverse facts available for the final determination. *See Decision Memo,* at Comment 19. As discussed above, BAS's calculated margin for the final determination is the highest corroborated margin in this investigation. Therefore, we have continued to apply partial adverse facts available to the quantity of unreported sales by the U.S. trading company using BAS's calculated margin for the final determination.

Additionally, we are applying adverse facts available to certain unreported raw materials by Kremny. *See Decision Memo,* at Comment 11. We are using the highest surrogate value for a mineral to value the quantity of unreported raw materials.

Critical Circumstances

In the Department's *Preliminary Determination*, we determined that critical circumstances exist for imports of silicon metal from Russia manufactured and/or exported by the Russia-wide entity. We preliminarily found, however, that critical circumstances do not exist for BAS and RTL and Kremny/SKU and Pultwen because there was no evidence of ''massive imports'' based on a five-month comparison period. At the time of the *Preliminary Determination*, the Department received shipment data from BAS and RTL and Kremny/SKU and Pultwen through July 2002. Since the *Preliminary Determination*, BAS and RTL and Kremny/SKU and Pultwen have submitted shipment data through November 2002 . We have reviewed this data and we continue to find that critical circumstances do not exist for BAS and RTL and Kremny/SKU and Pultwen based on the lack of ''massive imports'' as shown by the six-month shipment data. However, we continue to find that critical circumstances exist for the Russia-wide entity as discussed in the *Preliminary Determination*.

Suspension Agreement

On October 1, 2002, we received a joint request from the two primary exporters of silicon metal from Russia, BAS and Kremny/SKU, proposing a suspension agreement pursuant to 734(c) of the Act. Under a suspension agreement concluded pursuant to section 734(c) of the Act, the normal value cannot exceed the U.S. market price by more than 15 percent. Morever, we may only accept a suspension agreement under 734(c) of the Act if we determine that ''extraordinary circumstances are present in a case,'' such as the suspension of the investigation will be more beneficial to the domestic industry than the continuation of the investigation, and the investigation is complex. No agreement was concluded.

Fair Value Comparisons

To determine whether sales of silicon metal from Russia were made in the United States at less than fair value, we compared export price to NV, as described in the ''Export Price'' and ''Normal Value'' sections of the *Preliminary Determination*. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Surrogate Country

For purposes of the final determination, we continue to find that Egypt remains the appropriate primary surrogate country for Russia. For certain factors of production values, where we could not locate usable Egyptian prices, we used Thai import prices (for charcoal) or domestic South African prices (for quartzite and quartzite fines). For further discussion and analysis regarding the surrogate country selection for Russia, see the ''Surrogate Country'' section of our *Preliminary Determination* and the Issues and Decision Memorandum, at Comments 1–9.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs Service (''Customs'') to continue to suspend liquidation of imports of subject merchandise, which is produced by BAS and Kremny/SKU, and entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* in the **Federal Register**. Additionally, in accordance with section 735(c)(1)(B) of the Act, we are directing Customs to continue to suspend liquidation of imports of subject merchandise, which is produced by the Russia-wide entity (all entries of subject merchandise except for entries of Kremny/SKU or BAS material), and entered, or withdraw from warehouse, for consumption on or after the date following 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct Customs to continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

SILICON METAL

Exporter	Weighted-Average margin (percent)
Kremny/SKU	54.77
BAS	77.51
Russia-Wide Rate	77.51

Disclosure

The Department will disclose calculations performed, within five days of the date of publication of this notice, to the parties in this investigation, in accordance with section 351.224(b) of the Department's regulations.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our affirmative determination of sales at LTFV. As our final determination is affirmative, the ITC will determine within 45 days after our final determination whether imports of silicon metal from Russia are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix I

Petitioners' Comments

Comment 1: Egypt as a primary surrogate country
Comment 2: Valuation of quartzite
Comment 3: Valuation of coal
Comment 4: Valuation of petroleum coke
Comment 5: Valuation of wood charcoal
Comment 6: Valuation of electrodes
Comment 7: Valuation of rail freight
Comment 8: Valuation of electricity
Comment 9: Valuation of financial ratios
Comment 10: Valuation of profit
Comment 11: Silicon metal fines
Comment 12: Kremny's unreported raw materials
Comment 13: RTL's date of sale
Comment 14: Pultwen's sales to a certain U.S. customer
Comment 15: Discounts
Comment 16: Brokerage and handling expenses
Comment 17: Expenses Related to a Certain Sale

Kremny/SKU's and Pultwen's Comments

Comment 18: Relationship between Pultwen and the U.S. trading company
Comment 19: Use of Adverse Facts Available regarding the U.S. trading company's sales

BAS's and RTL's Comments

Comment 20: Valuing of inland freight added to surrogate import values for raw materials
Comment 21: Packing materials
Comment 22: Electricity usage
Comment 23: Insurance expense
Comment 24: Labor hours
Comment 25: Electrodes

[FR Doc. 03–3408 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–822]

Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review of stainless steel sheet and strip from Mexico.

SUMMARY: On August 7, 2002, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico (67 FR 41523). This review covers one manufacturer/exporter, ThyssenKrupp Mexinox S.A. de C.V. (Mexinox) of the subject merchandise to the United States during the period July 1, 2000 to June 30, 2001. Based on our analysis of the comments received, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone : (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 2002, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico for the period July 1, 2000 to June 30, 2001. *See Stainless Steel Sheet and Strip in Coils from Mexico; Preliminary Results of Antidumping Duty Administrative Review* (67 FR 51204). In response to the Department's invitation to comment on the preliminary results of this review, Mexinox (the respondent) and Allegheny Ludlum, AK Steel Corporation, J&L Specialty Steel, Inc., Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC (collectively, petitioners) filed their case briefs on September 12, 2002. Petitioners submitted their rebuttal brief on September 20, 2002 and Mexinox filed its rebuttal brief on September 23, 2002. On November 7, 2002, we published in the **Federal Register** our notice of the extension of time limits for this review (67 FR 67832). This extension established the deadline for this final as February 3, 2003.

Period of Review

The period of review (POR) is July 1, 2000 to June 30, 2001.

Scope of the Review

For purposes of this order, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (i.e., cold-rolled sections, with a prepared edge, rectangular in shape, of a width of

not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, ''Additional U.S. Note''' 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025

percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves for compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[1]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[5]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary, Group III, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated February 3, 2003, which is hereby adopted by this

[1] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[2] ''Gilphy 36'' is a trademark of Imphy, S.A.

[3] ''Durphynox 17'' is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] ''GIN4 Mo,'' ''GIN5'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099, of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly via the Internet at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made four changes to the margin calculation:

- First, we revised the U.S. indirect selling expense (ISE) ratio by removing raw material sales from the denominator and by deducting an amount attributable to expenses incurred in selling the raw materials from the numerator. We used this revised ratio to recalculate U.S. ISEs.
- Second, we recalculated Mexinox's interest expense ratio by: (1) disallowing its reported offset to short-term interest income and instead estimating short-term interest income based on the consolidated financial statements of ThyssenKrupp AG, its parent at the highest level of consolidation; (2) including an amount representing foreign exchange gains and losses incurred by ThyssenKrupp AG on financing activities; and (3) deducting an amount representing packing expenses from the denominator.
- Third, we recalculated Mexinox's general and administrative (G&A) expense ratio by including employees' statutory profit sharing in the numerator and by deducting packing expenses from the denominator.
- Fourth, we included in the denominator of the assessment rate the entered value of subject merchandise that entered during the previous period of review or during the instant review for consumption in the United States but was sold to unaffiliated parties outside the United States during the instant review.

These changes are discussed in the relevant sections of the Decision Memorandum.

Final Results of Review

We determine that the following weighted-average percentage margin exists for the period July 1, 2000 to June 30, 2001:

Manufacturer/ Exporter	Weighted Average Margin (percentage)
Mexinox	6.15

Assessment

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific *ad valorem* duty assessment rates. Where the importer-specific assessment rate is above *de minimis*, we will instruct Customs to assess duties on all entries of subject merchandise by that importer. We will direct the Customs Service to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period (*see* 19 CFR 351.212(a)).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be the rate listed above; (2) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 30.85 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary

information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: February 3, 2003.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

Adjustments to Normal Value

Comment 1. Additional Circumstance of Sale Adjustment to Normal Value
Comment 2: Home Market Indirect Selling Expenses
Comment 3: Level-of-Trade Adjustment

Adjustments to United States Price

Comment 4: CEP Profit
Comment 5: Duty Drawback
Comment 6: U.S. Indirect Selling Expenses
Comment 7: Additional Mexinox USA Expenses
Comment 8: Calculation of the U.S. Interest Rate
Comment 9: Inventory Carrying Costs

Cost of Production

Comment 10: Interest Expenses
Comment 11: General & Administrative Expenses
Comment 12: Whether to Include Services Supplied by Mexinox USA in Material Costs
Comment 13: Scrap Recovery Values

Further Manufacturing

Comment 14: Value-Added Costs by Ken-Mac

Assessment Rates

Comment 15: Assessment Rate Methodology

Margin Calculations

Comment 16: Treatment of Non-Dumped Sales

[FR Doc. 03–3406 Filed 2–10–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–822]

Stainless Steel Sheet and Strip in Coils from Mexico; Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the 2001–2002 administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Mexico. This review covers one manufacturer/exporter of the subject merchandise to the United States and the period July 1, 2001 through June 30, 2002.

EFFECTIVE DATE: February 11, 2003

FOR FURTHER INFORMATION CONTACT: Deborah Scott at (202) 482–2657 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On August 27, 2002, in response to a request from the respondent, ThyssenKrupp Mexinox S.A. de C.V., we published a notice of initiation of this administrative review in the **Federal Register**. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000. Pursuant to the time limits for administrative reviews set forth in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the current deadlines are April 2, 2003 for the preliminary results and July 31, 2003 for the final results. It is not practicable to complete this review within the normal statutory time limit due to a number of significant case issues, such as major inputs purchased from affiliated suppliers, the reporting of downstream sales, and level of trade. Therefore, the Department is extending the time limit for completion of the preliminary results until July 31, 2003 in accordance with section 751(a)(3)(A) of the Tariff Act. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act (19 U.S.C. 1675 (a)(3)(A) (2001)).

Dated: January 30, 2003.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–3407 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended Export Trade Certificate of Review, application no. 90–5A005.

SUMMARY: The Department of Commerce has issued an amended Export Trade Certificate of Review to the California Kiwifruit Commission (''CKC'') and California Kiwifruit Exporters Association (''CKEA'') on February 5, 2003. The original certificate was issued on August 10, 1990 (55 FR 33740, August 17, 1990), and previously amended on November 27, 1990 (55 FR 50204, December 5, 1990); January 29, 1991 (56 FR 4601, February 5, 1991); February 24, 1992 (57 FR 6712, February 27, 1992); and January 14, 2002 (67 FR 2636, January 18, 2002).

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number), or by E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (2001).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

CKC's and CKEA's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new ''member'' of the certificate within the meaning of section 325.2(1) of the regulations (15 CFR 325.2(1)): Oppenheimer, David & Associates, LP, Seattle, Washington; and Pacific Trellis Fruit, Reedley, California;

2. Delete the following companies as ''members'' of the certificate: Sunny Cal Farms, Reedley, California; and George Brothers, Sultana, California; and

3. Change the listing of the company names for the current members: Universal Produce Corp. to the new listing Phillips Farms Marketing; Chase National Kiwi Farms, Inc. to the new listing Chase National Kiwi Farms; Kings Canyon/Corrin Sales Corp. to the new listing Kings Canyon Corrin Sales, LLC; Regatta Tropicals to the new listing Regatta Tropicals, Ltd; Stellar Distributing to the new listing Stellar Distributing, Inc.; Sun Pacific Marketing Coop. to the new listing Sun Pacific Marketing Cooperative, Inc.; Trinity Fruit Sales Co. to the new listing Trinity Fruit Sales Company; Venida Packing Co. to the new listing Venida Packing, Inc.; and WKS/Wil-Ker-Son Ranch to the new listing WKS Sales.

The effective date of the amended certificate is November 7, 2002. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: February 5, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 03–3300 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 011102267–3025–03; I.D. 100102F]

Financial Assistance for Marine Mammal Stranding Networks Through the John H. Prescott Marine Mammal Rescue Assistance Grant Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of solicitation for applications.

SUMMARY: The National Marine Fisheries Service (NMFS) (hereinafter ''we'' or ''us'') issues this document to solicit applications for Federal assistance under the John H. Prescott Marine Mammal Rescue Assistance Grant Program (Prescott Grant Program). This document describes how to submit applications and proposals for funding under the 2003/2004 Prescott Grant Program and how we will determine which proposals will be funded. We will provide financial assistance (up to $100,000 in Federal funds, with a 25 percent non-federal match) to eligible stranding network participants working within waters under United States jurisdiction for proposals pertaining to cetaceans and pinnipeds, except walrus. Proposals must fall primarily within one of the following categories: (A) recovery or treatment (i.e., rescue and/or rehabilitation) of live stranded marine mammals, (B) data collection from living or dead stranded marine mammals for scientific research regarding marine mammal health, and (C) facility operations directly related to the recovery or treatment of marine mammals or collection of data from living or dead stranded marine mammals. Proposals will be reviewed for eligibility, technical merit, and consistency with the Prescott Grant Program's national and regional funding priorities. Final selection will be based on results of the on-line reviews, peer reviews, merit review, equitable distribution of funds among regions, as well as other policy considerations.

DATES: Proposal packages for the annual award cycle must be postmarked by April 14, 2003. For proposal packages submitted under the emergency assistance component of the Prescott Grant Program no submission deadline applies (see Section I. A.).

ADDRESSES: Proposal packages for the annual award cycle should be sent to NOAA/NMFS/Office of Protected Resources, Marine Mammal Health and Stranding Response Program, Attn:Michelle Ordono, 1315 East-West Highway, Room 12604, Silver Spring, MD 20910–3283, phone 301–713–2322 ext 177. Proposal packages for the emergency assistance component of the Prescott Grant Program should be sent to the NMFS Regional Office that oversees the area of action (see the NMFS Prescott Grant Program web page at:http://www.nmfs.noaa.gov/prot__res/ PR2/ Health__ and__ Stranding__ Response__ Program/ Prescott.html for addresses).

All proposal packages must include: (1) one signed original of the entire proposal and all required forms, and (2) two paper copies of the entire proposal and all required forms (including supporting documentation). One electronic copy on CD or diskette (in Microsoft Word v. 97 or earlier or WordPerfect v. 6.1 or lower) of the entire proposal, including supporting documentation but minus all required forms, is also requested (although not required). Federal forms and required elements of the proposal packages can be obtained from the NMFS Protected Resources Home Page (see section I. L. Electronic Access Addresses). We cannot accept completed applications via the Internet or facsimile at this time.

FOR FURTHER INFORMATION CONTACT: Simona Perry, Marine Mammal Health and Stranding Response Program, phone 301–713–2322 ext 106 or via email:Prescott Grant FR.comments @ noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Marine Mammal Rescue Assistance Act of 2000 amended the Marine Mammal Protection Act (MMPA) to establish the John H. Prescott Marine Mammal Rescue Assistance Grant Program (16 U.S.C. 1421f–1)(hereafter referred to as the Prescott Grant Program). This notice describes how to submit proposals to the Prescott Grant Program for funding using fiscal year (FY) 2003 and 2004 funds and how we will determine which proposals will be funded.

A. Background

The Prescott Grant Program is conducted by the Secretary of Commerce to provide federal assistance to eligible stranding network participants (see section I. E. of this document) for (A) recovery or treatment (i.e., rescue and/or rehabilitation) of live stranded marine mammals[1], (B) data collection from living or dead stranded marine mammals for scientific research regarding marine mammal health, and (C) facility operations directly related to the recovery or treatment of stranded marine mammals and collection of data from living or dead stranded marine mammals. The Prescott Grant Program is administered through the NMFS Marine Mammal Health and Stranding Response Program (MMHSRP).

The MMHSRP was formalized in 1992 to fulfill the mandates of the Marine Mammal Health and Stranding Response Act, which amended the MMPA in 1992 (16 U.S.C. 1421). The MMHSRP was established to achieve 3 broad goals: (1) to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; (2) to correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and (3) to coordinate effective responses to unusual mortality events. To achieve these goals, the MMHSRP (through close coordination with regional stranding networks) has the following objectives: improve the rescue, care and treatment of stranded marine mammals; collect life history data and other biomedical data from live and dead stranded marine mammals; develop baselines of ''normal'' stranding causes; improve the rapid detection of unusual mortality events; collect archival samples for future retrospective studies on causes of mortality or illness and for placement in the National Marine Mammal Tissue (and Serum) Bank; and develop comprehensive and consistent guidance for the rescue and rehabilitation of stranded marine mammals, collection of specimens, quality assurance, and analysis of tissue samples. It is anticipated that awards funded through the Prescott Grant Program will facilitate achievement of the MMHSRP goals and objectives by providing financial assistance to eligible stranding network participants.

It is NMFS's intent to also reserve a portion of the funds to make emergency assistance available for unexpected, significant stranding events throughout the year on an as-needed basis. This emergency assistance is available to eligible network participants regardless of whether they are already receiving funds from the Prescott Grant Program's annual award cycle for another project. Responders to such stranding events should contact the NMFS Regional Office that oversees the area of action for further information and submit the proposal package to the NMFS regional stranding coordinator for review and approval of the need for such an award. For addresses of appropriate NMFS Regional Offices and stranding coordinators, see the MMHSRP web site:http://www.nmfs.noaa.gov/prot__res/ PR2/ Health__and__ Stranding__ Response__Program/

[1]For purposes of this document, a stranded marine mammal is a marine mammal in the wild that is (1) dead and on a beach, shore, or in waters under the jurisdiction of the United States or (2) is live and on a beach or shore of the United States and unable to return to the water, is in apparent need of medical attention, or is in waters under the jurisdiction of the United States but is unable to return to its natural habitat under its own power or without assistance.

mmhsrp.html. The NMFS regional coordinator will then forward all application materials to the Office of Protected Resources with a letter of concurrence of need. Until further guidance is published, those seeking emergency assistance funding should prepare their proposal packages according to the guidelines outlined in Section III of this document and forward all forms and documentation to the appropriate NMFS Regional Office.

B. Changes from the 2002 Solicitation

As a result of comments received from those who submitted proposals in 2002 and those who took part in the 2002 technical and merit reviews, changes to the solicitation and review processes are being instituted in this competition. Therefore, we encourage applicants who submitted a proposal in 2002, to read this entire document before preparing a proposal for the 2003/2004 cycle.

Four significant changes to the 2003/2004 funding competition include: 3 separate proposal categories that encompass Program goals and funding priorities (see Section I. C. and Section II); all proposal packages for the 2003/2004 award cycle will be sent to NMFS' Office of Protected Resources (see **ADDRESSES**); a new three stage review process, including on-line reviews of each proposal, panel peer reviews of each proposal, and Federal government merit review of each proposal scoring greater than 60 points in either the on-line or peer review (see Section IV); and new review criteria for use by both on-line and peer reviewers (see Section IV).

C. Proposal Categories

For this solicitation, all proposals must fall within one of the 3 following categories: Category A - Recovery or treatment of live stranded marine mammals (i.e., rescue of live stranded marine mammals including treatment, assessment, and/or rehabilitation); Category B - Data collection from living or dead stranded marine mammals (i.e., recovery of stranded marine mammals for collection of Level A, B, or C data, specimen collection, and/or analyses); Category C - Facility operations directly related to the recovery or treatment of stranded marine mammals or collection of data from living or dead stranded marine mammals (i.e., physical plant renovations, maintenance, facility modifications/upgrades, and/or construction).

Successful proposals under Category A will be those that propose to improve live marine mammal stranding recovery or treatment, including, but not limited to:enhancing the rescue and treatment of animals, training of responders and rehabilitators via development of outreach and educational material or workshops, developing and testing of new or novel techniques for transport, treatment, or reporting, and non-construction operational needs (e.g., equipment, supplies, staffing, printing) related to these activities. Successful proposals under Category B will be those that propose to collect data that will allow researchers to correlate physical, chemical, biological, and marine mammal health parameters towards a better understanding of marine mammal population biology, and non-construction operational needs (e.g., equipment, supplies, staffing, printing) related to these activities. Successful proposals under Category C will be those that propose to meet facility operation needs (e.g., physical alterations to facility, maintenance) for stranding response and recovery or conduct facility upgrades (e.g., renovations, build-outs) in order to enhance existing recovery or treatment areas or increase the ability to collect marine mammal health and environmental data before, during, or after stranding events. According to the statute, preference will be given to facility operation needs and upgrades for those facilities that have established records for rescuing or rehabilitating sick and stranded marine mammals.

The applicant must select only one of the 3 categories that best fits their proposal. We recognize that most projects will have overlap with more than one category; however, applicants must determine which one category best fits the overall goals of the proposed project. For additional guidance on the type of expertise that will be used in evaluating proposals, applicants should refer to Section IV. B. and IV. C. In the 2003/2004 award cycle, no Prescott Grant Program funds will go towards basic scientific research on non-stranded marine mammals (i.e., wild population studies).

D. Program Funding Priorities

Each proposal category has a set of national and regional funding priorities that relate to specific national or regional stranding network needs. All proposals must identify at least one national or regional funding priority that is directly related to the projects goals and objectives. These specific funding priorities are outlined in section II of this document and are not in any rank order.

E. Available Program Funds

This solicitation announces that a minimum of $1.3M is available for distribution and that a maximum of $8.8M may be available for distribution under the 2003/2004 Prescott Grant Program. For the 2003/2004 annual cycle there is $1.3M from carryover of FY 2002 funds, and possibly up to $3.76M from FY 2003 appropriations, and up to $3.76M from FY 2004 appropriations. Applicants are hereby given notice that neither funds for FY 2003 nor FY 2004 have been appropriated, and therefore exact dollar amounts cannot be given. The maximum Federal award for each annual award or emergency assistance award cannot exceed $100,000 (with a minimum of 25 percent non-Federal cost share), as stated in the legislative language (16 U. S. C. 1421f–1).

In addition to the annual competitive process, $400K is available from FY 2002 carryover to provide for emergency assistance awards. If appropriations are received for FY 2003 and FY 2004, then additional funds will be set aside for these emergency assistance awards. Of the FY 2003 appropriations, $200K will be set aside. Additionally, FY 2004 appropriations will be set aside as needed or as indicated by previous usage of the emergency assistance fund. All emergency funds set aside and unused will be carried over for awards in subsequent years.

There is no limit on the number of proposals that can be submitted by the same eligible stranding network participant or authorized researcher during the 2003/2004 annual cycle. However, there are insufficient funds to award financial assistance to every applicant. Multiple proposals submitted must clearly identify different projects and must be successful in the competitive review process. In an attempt to ensure that the greatest number of applicants receive assistance during the 2003/2004 funding cycle, eligible stranding network participants can receive no more than two awards in this cycle. The two awards must be for projects that are clearly separate in their objectives, goals, and budget requests. In addition, if eligible researchers are applying as Principal Investigators, and are not independently authorized under the MMPA Section 112(c), the MMPA Section 104 (see implementing regulations at 50 CFR 216.33–44), the MMPA Section 109(h) (see implementing regulations at 50 CFR 216.22), or the National Contingency Plan for Response to Marine Mammal Unusual Mortality Events, then they can receive no more than one award in the 2003/2004 cycle.

Eligible stranding network participants and researchers can be identified as Co-Investigators or Cooperators on an unlimited number of

proposals. In addition, Department of Commerce (DOC) and Department of Interior (DOI) employees may act as Cooperators if they are responsible for performing analyses or interpreting data collected under a Prescott award. However, no Prescott Grant Program funds can be used for salaries or travel of DOC or DOI employees. See section I. F. for Eligibility requirements.

There is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If an application for a financial assistance award is selected for funding, NOAA/NMFS has no obligation to provide any additional funding in connection with that award in subsequent years. In no event will NOAA or DOC be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities.

If a recipient of an award incurs any costs prior to receiving an award agreement signed by an authorized NOAA official, they would do so solely at their own risk of these costs not being included under the award. Notwithstanding any verbal or written assurance that applicants have received, pre-award costs are not allowed under the award unless the Grants Officer approves them in accordance with 15 CFR 14.28.

F. Eligibility

There are 5 categories of eligible stranding network participants that can apply for funds under this Program: (1) Letter of Agreement (LOA) holders; (2) LOA designees; (3) researchers; (4) NMFS-recognized Northwest Region participants; and, (5) state, local, or eligible Federal government entities.

In order for these organizations and individuals to apply for award funds under the Prescott Grant Program, they must meet the following eligibility criteria specific to their category of participation:

1. LOA Holder Participant

a. Active as an authorized participant for the past 3 years in network activities.[2]

b. Participating in good standing.[3]

c. Holding a current LOA for stranding response (either live or dead animal response) or rehabilitation from NMFS.

d. Not a current full-time or part-time employee of the DOC or the DOI.

2. LOA Designee Participant

a. Active as an authorized participant for the past 3 years in network activities[2].

b. Participating in good standing[3].

c. Holding a current letter of designation from a NMFS LOA holder.

d. Not a current full-time or part-time employee of DOC or DOI.

3. Researcher Participant

a. Active as an authorized participant for the past 3 years in network activitiess.[2]

b. Holds an authorizing letter from an appropriate NMFS Regional Administrator to salvage or receive salvaged dead stranded marine mammal specimens and parts for the purpose of utilization in scientific research (50 CFR 216.22), unless an exception to notification or prior authorization is cited under 50 CFR 216.22(c)(8). Persons authorized to salvage dead marine mammal specimens under this section must have registered the salvage with the appropriate NMFS Regional Office within 30 days after the taking or death occurs.

c. Holds or has applied for a NMFS scientific research and/or enhancement permit to take marine mammals requested under authority of the MMPA of 1972, as amended (16 U. S. C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the ESA of 1973, as amended (16 U. S. C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222, subpart C).

d. Have at least one designated co-Investigator(s) that is an active NMFS-authorized stranding network participant in good standing[3].

e. Not a current full-time or part-time employee of DOC or DOI.

4. Northwest Region Participants

a. Active as a NMFS-recognized participant for the past 3 years or more in Northwest Region network activities[2] and named in the Draft 2002 National Contingency Plan for Response to Marine Mammal Unusual Mortality Events.

b. Participating in good standing[3].

c. Not a current full-time or part-time employee of DOC or DOI.

5. State, Local, or Federal Government Participants

a. Actively involved as an authorized participant in stranding response and/or rehabilitation during the past 3 years in an area of geographic need (i.e., municipality or larger region with no existing responder)[2].

b. Participating in good standing[3].

c. State and local government officials or employees participating pursuant to MMPA section 109(h)(16 U.S.C. 1379(h)) for marine mammal species not listed under the Endangered Species Act and fulfilling reporting obligations outlined in 50 CFR 216.22 (i.e., submission of written report to NMFS every 6 months containing description of animal(s) involved, circumstances of taking, method of taking, name and position of official or employee involved, and disposition of animal(s)).

d. Not a current full-time or part-time employee of DOC or DOI.

Applicants must submit the required documentation in their proposal (see section III, How to Apply) as evidence that they are an LOA holder participant, designee participant, researcher participant, NMFS-recognized Northwest Region participant, or a state,

[2]Applications from new network members, such as individuals or groups that have been granted authorization recently, will likely not qualify for eligibility during the first few funding cycles unless those applicants have experience as active Network participants (e.g., as designee or under 109(h)) for the past 3 years. The Act makes clear its intent to provide financial assistance to the active stranding network: ''Provide grants to eligible stranding network participants* * *'', and preference should be given to: ''* * * those facilities that have established records for rescuing or rehabilitating sick and stranded marine mammals.'' The 3 year period is important to establishing whether or not participants are in good standing by their completion of reporting requirements and level of cooperation.

[3]To be ''in good standing'', you must meet all of the following criteria:

a. If a Marine Mammal Protection Act (MMPA) or Endangered Species Act (ESA) scientific research or enhancement permit holder and the applicant is a designated Principal Investigator, have fulfilled all permit requirements, including but not limited to submission of all reports, and must have no pending or outstanding enforcement actions under the MMPA or ESA.

b. Have complied with the terms and responsibilities of the appropriate LOA, MMPA section 109(h) authorization, or National Contingency Plan (whichever applies). This includes the following reporting requirements: (1) timely reporting of strandings to NMFS, (2) timely submission of complete reports on basic or Level A data to the Regional Coordinator (includes investigator's name, species, stranding location, number of animals, date and time of stranding and recovery, length and condition, and sex; marine mammal parts retention or transfer; annual reports), and (3) collecting information or samples as necessary and as requested. This also includes the following coordination/cooperation requirements: (1) cooperation with state, local, and Federal officials, and (2) cooperation with other stranding network participants.

c. Have cooperated in a timely manner with NMFS in collecting and submitting Level B (supplementary information regarding sample collection related to life history and to the stranding event) and Level C (necropsy results) data and samples, when requested.

d. Have no current enforcement investigation for the take of marine mammals contrary to MMPA or ESA regulations.

e. Have no record of pending NMFS notice of violation(s) regarding the policies governing the goals and operations of the Stranding Network.

local, or Federal government participant. All eligibility criteria specified for the participant's category must be met in order for a proposal to be considered for funding. Proposals that are not eligible for funding according to the above criteria will be returned to the applicant with explanation.

We support cultural and gender diversity in our programs and encourage eligible women and minority individuals and groups to submit proposals. Furthermore, we recognize the interest of the Secretaries of Commerce and Interior in defining appropriate marine management policies and programs that meet the needs of the U. S. insular areas, so we also encourage proposals from eligible individuals, government entities, universities, colleges, and businesses in U. S. insular areas as described in the Marine Mammal Protection Act (MMPA) (section 3(14), 16 U. S. C. 1362). This includes the Commonwealth of Puerto Rico, the U. S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

We are also strongly committed to broadening the participation of Minority Serving Institutions (MSIs), which include Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities, in our programs. The DOC/NOAA/NMFS vision, mission, and goals are to achieve full participation by MSIs, to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. Therefore, we encourage all eligible applicants to include meaningful participation of MSIs whenever practicable.

Applicants are not eligible to submit a proposal under this program if they are an employee of the DOC or DOI. NOAA/NMFS employees (whether full-time, part-time, or intermittent) are not allowed to help in the preparation of proposals. MMHSRP staff (at the regional and national level) are available to provide information regarding statistics on strandings, MMHSRP programmatic goals and objectives, ongoing marine mammal programs, funding priorities for the 2003/2004 Prescott Grant Program cycle, and, along with other Federal Program Officers, can provide guidance on application procedures and proper completion of required Federal forms. Since this is a competitive program, NMFS and NOAA employees cannot provide assistance in conceptualizing, developing, or structuring proposals, or write letters of support for any proposal. NMFS or NOAA employees may provide information to applicants on appropriate analytical techniques including costs and time lines for such analyses. For activities that involve collaboration with current NOAA programs including, but not limited to, the National Marine Mammal Tissue Bank (NMMTB) and laboratories conducting analysis of tissues for contaminants, employees of NOAA or the DOC/National Institute of Standards and Technology can write a letter verifying that they are collaborating with the proposed project, that the applicant is trained to participate in the NMMTB, or that the applicant is currently participating in the National Marine Analytical Quality Assurance Program. Funds from the Prescott Grant Program cannot be used for NOAA or NMFS employee travel or salaries. Proposals selected for funding from a non-NOAA Federal agency will be funded through an inter-agency transfer.

Unsatisfactory performance under prior or current Federal awards can result in proposals not being considered for funding under the 2003/2004 Prescott Grant Program cycle.

G. Other Permits and Approvals

It is the applicant's responsibility to obtain all necessary Federal, state, and local government permits and approvals. In order to determine whether such permits and approvals have been obtained or requested, the applicant must include in the proposal package either:1) an application cover letter from the Prescott applicant to the appropriate authorizing entity requesting permits (e.g., MMPA scientific research permit) or approvals (e.g., Institutional Animal Care and Use Committee (IACUC) review), or 2) a copy of the final permit or approval.

For projects on live stranded or rehabilitated and/or released marine mammals, if the stranding network participant or researcher works for a research facility (e.g., University, Aquarium, animal care facility) with an IACUC, that applicant must have requested or obtained approval from the IACUC prior to applying for funding under this program (as required by the regulations under the Animal Welfare Act, 9 CFR 2.30–2.31). If the proposed project involves intrusive research (50 CFR 216.27(c)(6)) or if animals must be held after rehabilitation has been completed, the applicant must have applied for or obtained a MMPA and/or ESA scientific research and/or enhancement permit before the proposal will be considered for funding. Intrusive research is defined under 50 CFR 216.3. For proposed intrusive research at a research facility, the facility must have applied for registration or already be registered by the U. S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) as a research facility. For more information on obtaining research facility registration please refer to the APHIS, Animal Care Program home page at http://www.aphis.usda.gov/ac/.

Activities directly related to the individual animal's health assessment, standard diagnostics, treatment, approved post-release monitoring, or release are separately authorized by NMFS under the authorizations for stranding network participants and therefore do not require an additional permit.

It is the applicant's responsibility to request and obtain all water quality, air quality, or other waste disposal permits as well as wetland and building permits, when required. If applicable, documentation of the requests or approvals of all such environmental permits must be included in the proposal package. Such documentation must include any environmental impact analyses that is required to be submitted to the appropriate Federal, state, or local permitting authority as well as a National Environmental Policy Act (NEPA) checklist (form available on the Prescott Grant Program web site

http://www.nmfs.noaa.gov/ prot__res/PR2/ Health__and__Stranding__Response__ Program/Prescott.html). These documents will help the Prescott Grant Program staff determine if the application requires the preparation of an environmental assessment. At initial screening, all applications will be reviewed to ensure that they have sufficient environmental documentation to allow program staff to determine whether the proposal is categorically excluded from further NEPA analysis or whether an environmental assessment is necessary. For those applications needing an environmental assessment, affected applicants will be so informed after the initial screening stage and will be requested to prepare a draft of the assessment by the merit review panel meeting in Summer 2003. Applicants are expected to design their proposals so that they minimize their potential adverse impacts on the environment. Applicants who believe that the work or funding for the work under their applications may require an environmental assessment, for example those proposing construction activities under Category C, should not wait until the initial screening to plan for

conducting an environmental assessment. Category C applicants are encouraged to contact the Prescott Grant Program staff as early as possible for guidance on preparing an assessment. This process is intended to assist NMFS' compliance with NEPA.

If proposed activities in Category A, B, or C will take place within National Marine Sanctuaries, National Parks, National Seashores, and other Federally-designated or State-designated protected areas, it is the applicant's responsibility to request and obtain from the appropriate government agencies any necessary permits or letters of agreement.

For further information on permit requirements and applications procedures for Federal scientific research or MMPA enhancement permits, contact the NMFS Office of Protected Resources (see **FOR FURTHER INFORMATION CONTACT**) or see the following website:http://www.nmfs.noaa.gov/prot__res/PR1/Permits/pr1permits__types.html.

If a proposal is selected for funding, any necessary MMPA and/or ESA scientific research and/or enhancement permits must be received prior to receipt of funds. Failure to obtain other Federal, state, and local permits, approvals, letters of agreement, or failure to provide environmental analyses where necessary (i.e., NEPA environmental assessment) will also delay the receipt of funds if a project is otherwise selected for funding.

H. Duration and Terms of Funding

2003/2004 awards under the Prescott Grant Program will have a maximum project period of 3 years. However, the total Federal award cannot exceed $100,000 regardless of the length of the project period. We will not accept proposals requesting incrementally funded projects exceeding $100,000 in Federal funds.

If an applicant wishes to continue work on a project funded through this program beyond the project period and obligated award funds have not been expended by the end of this period, the applicant can notify the assigned Federal Program Officer 30 days prior to the end of the period to determine eligibility for a no-cost extension. If, however, the money is expended and funds are needed to continue the project, the applicant should submit another proposal during the next competitive award cycle (FY 2005) or seek an alternate source of funding.

If a proposal is selected for funding, we have no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding up to the maximum of $100,000 in the Federal share or to extend the period of performance is totally at our discretion.

I. Non-Federal Match or Cost Sharing

Legislation under which the Prescott Grant Program operates requires a non-Federal match, or cost share, in order to leverage the limited funds available for this program and to encourage partnerships among government, private organizations, non-profit organizations, the stranding network, and academia to address the needs of marine mammal health and stranding response. All proposals submitted must provide a minimum non-Federal match of 25 percent of the total budget (i.e., .25 x total project costs = total non-Federal share). Therefore, the total Federal share will be 75 percent or less of the total budget. For example, if the proposed total budget was $133,334, the minimum total non-Federal share would be $33,334 (.25 x $133,334 = $33,334) and the maximum total Federal share would be $100,000 (.75 x $133,334 = $100,000). The applicant can include a non-Federal match for more than 25 percent of the total budget, but this obligation will be binding. In order to reduce calculation error in determining the correct non-Federal match amounts, we urge all applicants to use the cost share calculator on the Prescott Grant Program web page (see section I. L. Electronic Access Addresses).

The Federal Program Officer will determine the appropriateness of all non-Federal match proposals, including the valuation of in-kind contributions, according to the regulations codified at 15 CFR 14.23 and 24.24. An in-kind contribution is a non-cash contribution, donated or loaned, by a third party to the applicant. In general, the value of in-kind services or property used to fulfill a non-Federal match will be the fair market value of the services or property. Thus, the value is determined by the cost of obtaining such services or property if they had not been donated, or of obtaining such services or property for the period of the loan. The applicant must document the in-kind services or property used to fulfill the non-Federal match. If we decide to fund a proposal, we will require strict accounting of the in-kind contributions within the total non-Federal match included in the award document. The Grants Officer (i.e., the Department of Commerce official responsible for all business management and administrative aspects of a grant and with delegated authority to award, amend, administer, close out, suspend, and/or terminate awards) is the final approving authority for the award, including the budget and any non-Federal match proposals.

J. Catalog of Federal Domestic Assistance

The Prescott Grant Program will be listed in the ''Catalog of Federal Domestic Assistance'' under number 11.439, titled ''Marine Mammal Data Program''. This information should be included on the Application Form, 424, space 10 (see section III, How to Apply, below).

K. Where to Send Proposals

All proposals for the annual award cycle should be sent to NOAA/NMFS/Office of Protected Resources, Marine Mammal Health and Stranding Response Program, Attn: Michelle Ordono, 1315 East-West Highway, Room 12604, Silver Spring, MD 20910–3283, phone 301–713–2322 ext 177. Proposals for the emergency assistance component of the Prescott Grant Program should be sent to the NMFS Regional Office that oversees the area of action (see the NMFS Prescott Grant Program web page at:http://www.nmfs.noaa.gov/prot__res/ PR2/ Health__and__ Stranding__Response__ Program/ Prescott.html for addresses). We cannot accept completed applications via the Internet or facsimile at this time.

L. Electronic Access Addresses

This solicitation, complete proposal packages (including required Federal forms) with instructions, a cost share calculator and addresses for submission are available on the NMFS Prescott Grant Program web page at:http://www.nmfs.noaa.gov/ prot__res/ PR2/ Health__and__ Stranding__ Response__ Program/ Prescott.html.

II. Program Goals and Regional Funding Priorities

For each of the proposal categories, national and regional funding priorities have been identified that are either essential to accomplishing the overarching goals of the Prescott Grant Program or address specific needs of each stranding region. The MMHSRP has identified national funding priorities that are nation-wide in scope or that cross regional boundaries in implementation. For the 2003/2004 annual cycle, each NMFS Region identified regional funding priorities that will improve the capabilities of their regional stranding network. These national and regional funding priorities will be reviewed prior to each annual award cycle in order to incorporate new needs that arise and eliminate priorities that have been met in previous award cycles.

Each proposal must identify one of the 3 categories and at least one national or regional funding priority under that category that is directly related to the project's goals and objectives. Proposals not clearly identifying one of the 3 categories will be returned to the applicant after initial review and will not be considered further in the 2003/2004 cycle.

Category A - Recovery or treatment of live stranded marine mammals (i.e.,rescue of live stranded marine mammals including treatment, assessment, and/or rehabilitation)

1. National Funding Priorities

Enhance the response to live animal strandings including transport, treatment, rehabilitation, or euthanasia.

Enhance rehabilitation practices to protect wild animals in rehabilitation from exposure to novel pathogens and prevent introduction of new or altered diseases into the wild.

2. Regional Funding Priorities

a. Northeast Region

Enhance response to live strandings of large whales (excluding right whale) and mass strandings.

Enhance safe and efficient transport of live stranded marine mammals, especially cetaceans, including aerial transport.

Operational needs to improve access to veterinary care, including on-site (lab or field) equipment or instruments for more rapid assessment and treatment of medical condition(s) and for monitoring of treatment response.

b. Northwest Region

Enhance network operations to respond to, rescue, transport, and treat stranded marine mammals that are sick or injured.

Improve the handling, stabilization, or treatment of live stranded odontocetes.

Train responders to enhance the consistency and quality of assessments and improve documentation of live marine mammal strandings for the potential of human interactions and diseases.

c. Southeast Region

Enhance network preparedness to respond to live strandings of large whales (excluding right whale) and mass strandings of live cetaceans.

Enhance the capability to respond to live stranded marine mammals that are at risk from oil or other hazardous material spills.

Enhance all aspects of live stranded marine mammal response and transport.

Develop outreach and educational materials regarding live stranded marine mammals for both network members and the general public.

d. Southwest Region

California only

Enhance response, treatment, and transport of live stranded marine mammals.

Enhance capability to respond to live stranded marine mammals entangled in fishing gear[4].

Enhance capabilities to respond to live strandings of marine mammals during El Nino years.

Equipment for routine transport of live stranded marine mammals.

Hawaii, Guam, American Samoa, and Northern Mariana Islands

Operational and staffing needs for increasing quality of care, including veterinary care, during live stranding events throughout the U.S. Pacific Islands (e.g., Guam, American Samoa, and Northern Mariana Islands).

Enhance coverage and response to live strandings of marine mammals throughout the U. S. Pacific Islands, particularly in remote or rural areas.

Outreach and training in the U.S. Pacific Islands (e.g., Guam, American Samoa, and Northern Mariana Islands) for response readiness and treatment of live stranded marine mammals.

Public outreach and education on protocols for communication and response to live stranding events.

Facility operation needs to improve access to veterinary care of stranded marine mammals, including facility improvements, on-site (lab or field) equipment, instruments for more rapid assessment of medical condition, and instruments for monitoring of treatment response.

Equipment needs to improve live stranded cetacean response and transport safety.

e. Alaska Region

Enhance response to live strandings of marine mammals throughout the state, particularly in remote and rural areas.

Enhance capability for the care and treatment of live stranded marine mammals.

Respond to live fur seal entanglements on the Pribilof Islands[4]

Facility operation or equipment needs for stranding response and live stranded marine mammal treatment.

[4]Authorization to conduct disentanglement activities on marine mammals can only be carried out under an MMPA Letter of Authority from NMFS or by state, local, or federal officials or employees under MMPA Section 109(h).

Category B - Data collection from living or dead stranded marine mammals (i.e., recovery of stranded marine mammals for collection of level A[5] and level B and C[6] data, specimens, and/or analyses)

1. National Funding Priorities

Collect specimens or data from stranded marine mammals to assess health trends in wild populations of cetaceans and pinnipeds, with emphasis on diseases that have potential for epizootics (e.g., morbillivirus), are endemic and may have a significant impact on survival/reproduction (e.g., herpes and other viruses), or have zoonotic potential.

Collect and assess human impact and post-Unusual Mortality Event data for baseline information on population demographics, life history, movement and distribution, and health, particularly from species of national concern such as beaked whales.

Enhance the quality and quantity of level B and C data[6] collected from stranded marine mammals.

2. Regional Funding Priorities

a. Northeast Region

Equipment to enhance recovery, examination, and necropsy of large whales and mass stranded cetaceans, including transport of carcasses to salvage sites or facilities and ultimately disposal sites.

Collect data to enhance the assessment of the causes of single or mass stranded marine mammals through the use of biological, physiological, or medical diagnostic studies.

Collect data on post-release survival of marine mammals including releases from rehabilitation and/or beach releases.

Collect consistent level A data[5], validate historic data, and improve the collection and sharing of level B and C data6 from stranded marine mammals.

Collect specimens and data from stranded marine mammals for the development of quality training materials on marine mammal anatomy and descriptive pathology.

Collect biological samples from stranded marine mammals in support of cooperative research projects using

[5]Level A data = Reporting which includes investigator's name, species, stranding location, number of animals, date and time of stranding and recovery, length and condition, and sex; marine mammal parts retention or transfer; annual reports. (Data collected through NOAA Form 89-864, OMB No. 0648-0178.)

[6]Level B data = Supplementary information regarding sample collection related to life history and to the stranding event. Level C data = Necropsy results. (Data collection is not required, but is collected on a voluntary basis by stranding network participants.)

quality control techniques (e.g., serological, histopathological, and chemical analyses, and tissue banking).

Develop training for data collection to enhance the consistency and quality of assessing marine mammal strandings for human-induced injuries and mortalities.

Enhance the quality, using quality control techniques (e.g., serological), of biological sample collection from live stranded marine mammals for analysis in support of cooperative research projects.

Upgrade facility information management systems and capabilities to improve or allow access to the Marine Mammal Health and Stranding Response national databases.

b. Northwest Region

Collect data from stranded marine mammals to investigate the incidence of human interactions and diseases affecting marine mammals.

Collect data from stranded marine mammals to use in comparative studies of contaminant exposures and burdens in marine mammals.

Development of protocols for the identification, processing, and disposal of dead marine mammals that carry contaminant burdens exceeding allowable limits for disposal in the environment.

Collect data from stranded southern resident killer whales to investigate overall health parameters.

Collect data from stranded killer whales and harbor porpoise to clarify taxonomic and stock identification in the wild populations of these two species.

c. Southeast Region

Enhance network preparedness to collect information from strandings of large whales (excluding right whale) and mass strandings of cetaceans.

Collect and evaluate information from stranded marine mammals that can be used in assessing the incidence or prevalence of human-induced injury or mortality.

Collect consistent level A data[5], validate historic data, and improve the collection of level B and level C data[6] from stranded marine mammals.

Enhance the capability to record information from stranded marine mammals impacted by oil or other hazardous material spills.

Collect biological samples from stranded marine mammals for analysis in support of marine mammal research projects through cooperative investigations using quality control techniques (e.g., serological, histopathological, and chemical analyses).

Collect post-Unusual Mortality Event data from stranded marine mammals for comparisons with mortality and disease observed during die-offs.

d. Southwest Region

California only

Collect specimens and data from stranded marine mammals to assess health trends in wild populations of cetaceans, with emphasis on diseases that have potential for epizootics (e.g., morbillivirus and others).

Full examination of dead-stranded California sea lions to determine the extent of purposeful human-induced mortality in the Southern California Bight.

Collect specimens and data from stranded marine mammals that will support baseline information on population demographics and life history (e.g., genetics, age-to-maturity, reproductive status, etc.).

Enhance the response to and collection of data from dead-stranded marine mammals.

Hawaii, Guam, American Samoa, and Northern Mariana Islands

Collect specimens and data from stranded marine mammals to assess the overall health trends in wild marine mammal populations.

Collect specimens and data from stranded, rehabilitated marine mammals to assess the conditions that affect releasability and identify health risks to wild populations.

Collect appropriate data to investigate the occurrence of epizootics (e.g., morbillivirus) in live stranded odontocetes.

Conduct thorough necropsies and collect biological samples that will enhance the ability to detect purposeful and incidental human-induced injuries and mortalities.

Collect consistent level A data[5] throughout the jurisdiction, including remote areas, and collect level B and C data6 from strandings of dead marine mammals.

Development of partnerships with marine mammal experts and others, to respond to and conduct studies supporting MMHSRP objectives related to live strandings of marine mammals.

e. Alaska Region

Collect consistent level A data[5] throughout the state, including remote areas.

Collect level B and C data[6] from dead-stranded marine mammals.

Conduct necropsies and diagnostics of stranded marine mammals.

Collect tissue samples appropriate for genetic analysis from stranded harbor seals and Steller sea lions.

Operational needs to improve in-house sample tracking and archiving for participation in the National Marine Mammal Tissue Bank and the Marine Mammal Health and Stranding national database.

Category C - Facility operations directly related to Categories A or B above(i.e., physical plant renovations, maintenance, facility modifications/ upgrades and/or construction)

1. National Funding Priority

Enhance physical plant capabilities to increase the quality of care of live stranded marine mammals or enhance the safety and quality of data or sample collection from living or dead stranded marine mammals.

2. Regional Funding Priorities

a. Northeast Region

Facility operation needs to enhance and support existing rehabilitation facilities in general or to upgrade existing facilities to meet upcoming rehabilitation facility guidelines.

Facility operation needs to improve access to veterinary care, including on-site (lab or field) equipment or instruments for more rapid assessment and treatment of medical condition(s) and for monitoring of treatment response.

b. Northwest Region

Enhance or upgrade facilities to handle and treat stranded marine mammals that must be kept in rehabilitation due to injury or disease.

Upgrade facilities for handling, stabilizing or treating stranded odontocetes.

Enhance or upgrade existing facilities in anticipation of NMFS guidelines on rehabilitation.

c. Southeast Region

Upgrade existing rehabilitation facilities, with special attention to active facilities (based on rehabilitation records and historic data) and facilities requiring improvements to meet upcoming NMFS guidelines on rehabilitation.

Enhancements or upgrades of necropsy facilities involved in analysis of samples collected from stranded marine mammals.

d. Southwest Region

California only

Facility operation needs or upgrades and renovations associated with veterinary care of stranded marine mammals.

Expansion and renovation of existing stranding and rehabilitation facilities.

Facility upgrades associated with treatment and feeding of stranded marine mammals.

Hawaii, Guam, American Samoa, Northern Mariana Islands

Renovations, upgrades, or expansions to live stranding and rehabilitation facilities.

e. Alaska Region

Facility upgrades and renovations for stranding response and live stranded marine mammal treatment.

Facility operation needs to improve in-house sample tracking and archiving for participation in the National Marine Mammal Tissue Bank and the Marine Mammal Health and Stranding national database.

III. Proposal Instructions and Requirements

The instructions in this document are designed to help applicants in preparing and submitting a proposal for federal funding under the 2003/2004 annual cycle and the emergency assistance component of the Prescott Grant Program. All required Federal forms, the narrative description of the budget and proposed project, and applicable supporting documentation must be complete and must follow the format described here. One signed original and two signed copies of the complete proposal package must be submitted. The original proposal and copies should not be permanently bound in any manner and must be printed on one side only. In addition, we are requesting that applicants submit an electronic copy, on diskette or CD (in Microsoft Word v. 97 or earlier or WordPerfect v. 6.1 or lower), of the narrative project description. The required unbound original and two copies, and the optional electronic copy must be sent to the address listed in section I. K. of this document and postmarked by the submission deadline (see **DATES**) in order to be considered in the 2003/2004 annual award cycle. If a package does not contain all of the required Federal forms and proposal elements described in this section it will be returned to the applicant and will not be considered further in the this funding cycle. Note that there will be no extensions of the deadline.

Category A and B proposals and Category C proposals (i.e., those that involve build-outs, alterations, upgrades, and renovations to existing facilities) require different federal forms depending on the percentage of federal funds being requested. That is, Category C proposals with 50 percent or more of their requested federal amount going to construction activities require the federal forms for construction (i.e., SF–424C and SF–424D) and do not require the federal forms for non-construction (i.e, SF–424A and SF–424B).

A. Required Federal Forms for Category A and B Proposals (i.e., non-construction)

Cover Sheets

SF–424 ''Application for Federal Assistance'' (''Catalog of Federal Domestic Assistance'' number is 11.439, and title is ''Marine Mammal Data Program'')

SF–424B ''Assurances - Non-Construction Programs''

Project Budget

SF–424A ''Budget Information - Non-Construction Programs''

Certifications and Disclosures

CD–511 ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying''

SF-LLL ''Disclosure of Lobbying Activities'' (as required under 15 CFR part 28)

CD–346 ''Name Check''

B. Required Federal Forms for Category C Proposals (i.e., construction)

Construction proposals with 50 percent or more of their requested federal amount going to construction activities such as build-outs, alterations, upgrades, and renovations to existing facilities must submit the following forms as part of their proposal package:

Cover Sheets

SF–424 ''Application for Federal Assistance'' (''Catalog of Federal Domestic Assistance'' number is 11.439, and title is ''Marine Mammal Data Program'')

SF–424D ''Assurances - Construction Programs''

Project Budget

SF–424C ''Budget Information - Construction Programs''

Certifications and Disclosures

CD–511 ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying''

SF-LLL ''Disclosure of Lobbying Activities'' (as required under 15 CFR part 28)

CD–346 ''Name Check''

C. Required Elements of all Project Proposals

A complete proposal package must include the following elements in this order:

1. Cover Sheets (Required Federal forms)

2. Project Budget (Required Federal form(s), budget justification and narrative, and, if applicable, a current and approved negotiated indirect cost agreement with the Federal government)

3. Title Page

4. Project Summary (6 sentences or less)

5. Narrative Project Description (10 pages or less, in format described below)

6. Supporting Documentation (other Federal forms, proof of eligibility, proof of non-profit status (if applicable), curriculum vitae/resumes for the Principal and Co-Investigators, and background documents)

Assistance in filling out required forms and avoiding common problems, complete proposal requirements, supplemental instructions for completing all Federal forms and the budget narrative, and questions and answers related to applying for funds under the Prescott Grant Program can be found on the Prescott Grant Program web site:http://www.nmfs.noaa.gov/prot__res/ PR2/ Health__and__ Stranding__ Response__ Program/ Prescott.html.

1. Cover Sheet

Office of Management and Budget (OMB) Standard Forms 424 and 424B or 424D must be the cover sheets for each proposal. Under Standard Form 424, Item 5, ''Legal Name'' must match the name of the eligible applicant (i.e., LOA holder, LOA designee, authorized researcher, Northwest Contingency Plan participant, or state, local, or Federal entity). To complete item 10 of Standard Form 424, the Catalog of Federal Domestic Assistance number is 11.439, and the title is ''Marine Mammal Data Program''. Since the 2003/2004 cycle will use funds from two fiscal years, we recommend for item 13 of Standard Form 424 a start date no earlier than December 2003 for project proposals beginning in 2003 and January 2004 for project proposals beginning in 2004.

2. Project Budget

Each proposal must include clear and concise budget information, both on the required federal forms, in summary and in narrative detail.

Category A and B proposals (i.e., proposals requesting a federal amount that does not include construction activities or in which construction activities are less than 50 percent of the total federal amount) must use OMB standard form 424A, ''Budget Information - Non Construction Programs'' and associated form instructions.

Category C proposals (i.e., proposals requesting a federal amount for construction activities that is equal to or greater than 50 percent of the total

federal amount requested) must use OMB standard form 424C ''Budget Information - Construction Programs'' and associated form instructions.

All instructions should be read before completing the appropriate budget form(s). Note that both Federal and non-Federal columns on Standard Form 424A must be filled in completely and separately and the amounts per category and total amounts on both the Standard Form 424A and 424C must correspond with the budget narrative and justification.

On a separate sheet, describe and justify in narrative detail or on a spreadsheet the itemized costs per category between Federal and non-Federal shares and the corresponding direct and indirect cost totals. For the non-Federal share, the itemized costs should be separated into cash and in-kind contributions. If in-kind contributions are included, describe briefly the basis for estimating the value of these contributions.

If the applicant currently has a negotiated indirect cost rate with the Federal government, an amount for indirect costs can be included in the budget. Indirect costs are overhead costs for basic operational functions (e.g., lights, rent, water, insurance) that are incurred for common or joint objectives and therefore cannot be identified specifically within a particular project. Indirect costs can be included in both the Federal and non-Federal cost shares as long as the method of calculation is clear and certain rules are followed. The first rule is that generally the Federal share of the indirect costs cannot exceed 25 percent of the total proposed direct costs. The second rule is that if the approved indirect cost rate is above 25 percent of the total proposed direct cost, the amount above the 25–percent level can only be used as part of the non-Federal share if it is part of a negotiated rate. If indirect costs are included, the package should include a copy of the current, approved, negotiated indirect cost agreement with the Federal government. However, if the applicant is still in the process of obtaining or updating an indirect cost rate agreement, then the proposal package should include a copy of the transmittal letter and supporting documentation sent to the appropriate Federal agency (i.e., cognizant agency) in order to establish a new rate. If the applicant has never received a Federal grant, they should contact the Department of Commerce, Office of Executive Assistance Management (DOC/OEAM) via their web site:http://www.osec.doc.gov/oebam/grants.htm before submitting the proposal package to the Prescott Grant Program. DOC/OEAM will help determine what documents must be submitted to obtain an indirect cost rate with the Department of Commerce.

We will not consider fees, fund-raising activities, travel for DOC or DOI employees, salaries for DOC or DOI employees, or profits as allowable costs in the proposed budget. The total costs of a project consist of all allowable costs you incur, including the value of in-kind contributions, in accomplishing project activities during the project period. A project begins on the effective date of an award agreement between you and the Grants Officer and ends on the date specified in the award. Accordingly, we cannot reimburse applicants for time expended or costs incurred in developing a project or preparing the application, or in any discussions or negotiations with us prior to the award. We will not accept such expenditures as part of your cost share.

3. Title Page

A Title Page must be included for each project. The Title Page must list the project title, project duration (with a start date no earlier than December 2003 or January 2004), applicant name (must match the ''legal name'' on Standard Form 424, Item 5), name of Principal Investigator or Contact, address and phone number of the Principal Investigator or Contact, the proposal category and funding priority under which the project fits (see section II. of this document), the project's objective(s), and a statement regarding the Federal, non-Federal, and total costs of the project.

4. Project Summary

In 6 sentences or less, briefly summarize:project goals and objectives as they relate to the Prescott proposal categories (i.e., Category A, Category B, or Category C), national or Regional funding priorities; proposed activities; geographic area where activities would occur; and expected outcomes and benefits from the activities (e.g., increased number of responses to live stranded cetaceans, greater and higher quality data collected from pinniped strandings, renovate and upgrade a marine mammal rehabilitation facility, etc.) of the project. This summary will be posted on our website if the project is funded.

5. Narrative Project Description

The narrative description of the proposed project must not exceed 10 pages (not including documents in the Supporting Documentation section) and must be typed in Courier size 12 font, either single or double-spaced. The narrative should demonstrate the applicant's knowledge of the need for the project, describe how the applicant will manage the business aspects of the grant (i.e., sound accounting practices), and show how the proposed project builds upon any past and current work in the subject area, presents novel or unique solutions, as well as relates to on-going work in related fields. Applicants should not assume that reviewers already know the relative merits of the project.

The narrative project description must include each of the following elements in the order listed here:

(1) Project goals and objectives (maximum 2 pages). Identify the Prescott Grant Program national or regional funding priorities, listed earlier in this document, to which the project's goals and objective(s) correspond. Identify the problem/opportunity the project intends to address and describe its significance to the marine mammal health and stranding response and rehabilitation community. State expected project accomplishments. Although actual stranding events cannot be predicted, historic stranding data in the region of proposed activities should be used to assess season, species, numbers, and likelihood of future strandings. These data are critical in linking proposed project objectives with the Prescott Grant Program's goals, funding priorities, and in assuring an equitable distribution of funds among regions. Therefore, we encourage applicants to provide stranding data and statistics by year and geographic area in sufficient detail to provide a historic and need-based context to the project.

(2) Project management (maximum 4 pages, excluding resumes, curriculum vitae, and agreements between Principal Investigators and other participants or grant fund managers where applicable). Describe how the proposed project will be organized and managed. Financial accounting systems to be used must be explained and a business point of contact responsible for managing those systems must be given. Identify whether the applicant is applying as an LOA holder, designee, researcher, Northwest Region contingency plan organization/individual, or state, local, or Federal entity under 109(h) of the MMPA. Researchers must describe who will administer the business aspects of the grant (i.e., on their own, through their current employer, an affiliated institution, or through a third-party organization) and why this method of administration has been chosen.

One Principal Investigator must be designated on each project. If a Principal Investigator is not identified, we will return the proposal. The Principal Investigator is responsible for all technical oversight and implementation of the work plan as delineated in the Statement of Work (see below). The Principal Investigator may or may not be the applicant. However, if the applicant is not the Principal Investigator, there must be an explanation of the relationship between the applicant and Principal Investigator (e.g., applicant will be responsible for managing the grant funds and the Principal Investigator will be responsible for completing the project milestones on time and within budget while maintaining the integrity and meet the goals of the project, etc.). Project participants or organizations that will have a significant role in conducting the project should be listed as Co-investigators. Organizations or individuals that support the project, for example, network members contributing data or samples, should be referred to as Cooperators. In this section, provide a statement of no more than one page on the qualifications and experience of consultants and/or subcontractors and any Cooperators that are not named as Co-investigators. Copies of the Principal Investigator's and all Co-investigator's current resumes or curriculum vitaes must be included in the package's Supporting Documentation section. In addition, the proof of eligibility documents (see II. C.6. Supporting Documentation) provided and listed in the Supporting Documents section of the proposal must name the Principal Investigator and/or Co-investigator. Resumes, curriculum vitaes, and proof of eligibility documents will not count as part of the 10 page limit.

Reference should be made to any copies of agreements between the Principal Investigator and other participants in the project, describing the specific activities each participant would perform or any endorsements received from other marine mammal health and stranding response participants related to this project that are included in the Supporting Documentation section.

This section should also explain who will be responsible for carrying out each activity proposed. Describe activities that will be conducted by Co-investigators, Cooperators, sub-contractors, or volunteers. Training of volunteers and use of volunteer staff time to complete project activities, as well as oversight of those volunteers, should be discussed in detail.

If any portion of the project will be conducted through consultants and/or subcontracts, procurement guidance found in 15 CFR part 24, ''Grants and Cooperative Agreements to State and Local Governments,'' and 15 CFR part 14, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations'' must be followed. This section should describe how requirements for competitive subcontracting will be met if applicable.

(3) Project statement of work (maximum 5 pages). This is a narrative of the work plan that will ensure the proposed project's goals and objectives are met within the proposed award period. It should include detailed descriptions of activities, protocols, methodologies, milestones, and expected products resulting from a successfully completed project. The narrative should respond to the following questions:

(a) What specific activities, protocols, and methodologies does the project include and how do these activities, protocols, and methodologies relate to the project's goals and objectives?

(b) What are the project milestones? List milestones, describing specific activities and associated time lines necessary to meet them. Describe the time lines in increments (e.g., month 1, month 2, etc.), rather than by specific dates.

(c) What are the major outcomes, results, or products expected? Describe expected outcomes, results, or products that will directly relate to the Prescott Grant Program proposal Categories A, B or C and the national and regional funding priorities.

(d) How will outcomes, results, or products be disseminated or shared? Describe how project outcomes, results or products will be disseminated to or shared with stranding network participants and other potential users. In addition, describe how activities and results of the project will be shared outside the stranding network for education and outreach purposes. In both cases, indicate the method of information or product transfer (e.g., print media, video, training manual, educational displays, facility sharing, etc.)

(4) Project impacts (maximum 1 page). Describe the potential impacts of this proposed project on both the recovery and treatment of stranded marine mammals and the collection of data from living or dead stranded marine mammals for use in scientific research on marine mammal health. Identify any other potential project impacts.

(5) Project performance evaluation (maximum 1 page). Specify the quantitative and/or qualitative criteria to be used in evaluating the relative success or failure of the project in achieving the stated project goals and objectives. For Category C proposals, performance measures should be based on (but are not limited to) such criteria as meeting or exceeding project time lines within budget and meeting or exceeding environmental and safety standards for construction activities.

(6) Need for government financial assistance(maximum 1 page). Explain the need for government financial assistance in successfully carrying out project activities. Describe resultant products of previous financial assistance, if applicable, referencing a list sources of funding received from the Federal government, either past or current, for this or a closely related project(s) included in the Supporting Documentation section (see below). In this section, describe other sources of Federal funding currently being sought for this same project.

(7) Federal, state, and local government programs and activities (maximum 1 page). List any existing Federal, state, or local government programs or activities that this project would affect and reference any corresponding documentation (i.e., permits, approvals, environmental assessments) included in the proposal package.

(8) Participation by persons or groups other than the applicant (maximum 1 page). Describe how government and non-government entities, particularly other members of the marine mammal health and stranding response community, will participate in the project and the nature of their participation. How much will other members of the marine mammal health and stranding response community participate in the project?

6. Supporting Documentation

Supporting documents will not count as a part of the 10 page limit.

In order to be considered for an award in this funding cycle, the applicant must provide proof of eligibility documents in this section. These include one or more of the following: LOA(s), LOA letter of designation, letter from NMFS Regional Administrator to collect or receive marine mammal specimens and parts under 50 CFR 216.22, if in the Northwest Region (Washington and Oregon) documentation that the applicant is a NMFS-recognized participant and named in the Draft 2002 National Contingency Plan for Response to Marine Mammal Unusual Mortality

Events, or reports sent to NMFS under MMPA Section 109(h)(50 CFR 216.22(b)) as a state, local, or Federal participant. Principal Investigators that are researchers and do not hold LOAs, are not LOA designees, are not NMFS-recognized Northwest Region participants, and are not MMPA Section 109(h) participants must include copies of letters from a NMFS Region or the MMHSRP authorizing them under 50 CFR 216.22, any MMPA and/or ESA scientific research and/or enhancement permits, as well as a Co-investigator's LOA or letter of designation. See section I. F., Eligibility, to determine what specific type of documentation is required.

Applicants requiring MMPA and/or ESA scientific research and/or enhancement permits and/or IACUC approvals must include in this section a copy of either: (1) an application cover letter from the Prescott applicant to NMFS and/or the IACUC, or (2) a copy of the final permit and/or approval.

If applicable, documentation of the requests or approvals of all environmental permits must be included in this section of the proposal. Such documentation should include any environmental analyses required for obtaining such permits, completed NEPA checklists (form available on the Prescott Grant Program web site http://www.nmfs.noaa.gov/ prot__res/ PR2/ Health__and__ Stranding__ Response__ Program/ Prescott.html), and environmental assessments.

Curriculum vitae or resumes of the Principals and Co-Investigators and all other required Federal forms (i.e., CD–511, SF-LLL, CD–346) must be included in this section.

Applicants applying as non-profit organizations must include a letter from the Internal Revenue Service verifying non-profit classification under Internal Revenue Code and tax exempt status under section 501(c)(3) of the Code.

Any other relevant documents and additional information (e.g., maps, additional stranding statistics for your geographic area or region, organizational history and information, schematics and architectural renderings of facility upgrades, photographs, etc.) that will help us to understand the proposed project and the problem/opportunity the project seeks to address should be included in this section.

IV. Screening, Review, and Selection Procedures

Screening, review, and selection procedures will take place in 5 steps, described in detail in this section:initial screening, on-line review, peer review, merit review, and final selection by the Selecting Official (i.e., the Assistant Administrator for Fisheries or AA). The on-line review will involve at least one reviewer per proposal and the peer review will involve at least 3 reviewers per proposal; therefore, all proposals will be subject to review by a minimum of 4 independent reviewers. The AA will make the final decision regarding which proposals will be funded based on recommendations of the merit review team as well as policy considerations such as costs, geographical distribution, financial need, duplication with other Federally funded projects, and equitable distribution of funds among the stranding regions.

A. Initial Screening

The initial screening will ensure that proposal packages have all required forms and proposal elements (listed below and in Section III), clearly relate to the 2003/2004 Prescott Grant Program proposal categories and funding priorities, and meet all of the eligibility criteria identified in Section I. F. of this document. Applicants that do not meet the required eligibility criteria described in section I. F. will not be eligible for funding in the 2003/2004 cycle. In addition, applicants proposing activities that may require an environmental assessment (i.e., Category C proposals) under NEPA must include sufficient environmental analyses (i.e., permit documentation and NEPA checklist) to allow program staff to determine whether or not the proposal can be categorically excluded from further analysis. If insufficient documentation is provided or if proposals cannot be categorically excluded from NEPA review, the applicant will be notified after initial screening that further information or an environmental assessment is necessary. Further documentation must be supplied immediately and the environmental assessments must be completed in time for the merit review panel in late Spring. Proposals requiring further NEPA review will still undergo on-line and peer review, unless there is some other reason for disqualification. Failure to complete an environmental assessment will delay processing of the proposal, and if selected for funding will delay receipt of funds.

Proposal packages received in the Office of Protected Resources and postmarked by the submission deadline will be screened to ensure that they:were postmarked by the due date (see **DATES**); include one original and two signed copies of the entire proposal package; include the correct OMB forms (424, 424A for Categories A and B or 424D for Category C, and 424B for Categories A and B or 424C for Category C) signed and dated (see section III. A and III. B of this document); provide for at least a 25–percent non-Federal cost share (see section I. I); identify a Principal Investigator and provide current resumes or curriculum vitae for both the Principal and all Co-Investigators (see section III. C); provide proof of eligibility (see section I. F.); address one of the 3 proposal categories for species under NOAA's jurisdiction (see section III); include proposal package elements 1 through 6 (see section III. C); include MMPA/ESA permit application cover letters or permits, IACUC letters or approvals, if applicable; include NEPA checklist and other environmental documentation, if applicable; and provide proof of non-profit status, if applicable. Proposals that pass this initial screening will be pooled based on the proposal category (i.e., Category A, B, or C) identified by the applicant and by the coast where activities are proposed resulting in 6 review pools.

The required unbound original and two copies, and the optional electronic copy must be sent to the address listed in section I. K. of this document and postmarked by the submission deadline (see **DATES**) in order to be considered in the 2003/2004 annual award cycle. If a package is not postmarked by the submission deadline, include a signed unbound original with two copies, and does not contain all of the required OMB forms and other documents described in this section it will be returned to the applicant and will not be considered further inthis funding cycle. Only those proposals satisfying all of the basic requirements above will enter the full evaluation phase of the review process, described in the next sections.

B. On-Line Review

After initial screening, on-line reviewers will be asked to evaluate individual proposals in the reviewers' specific area of expertise for technical soundness and feasibility via an on-line process. The on-line review results will be used to provide comments on the technical aspects of each proposal to both the peer and merit review panels (described below).

The proposal category (i.e., Category A, B, or C) and specific activities described in each proposal will be used in selecting the most appropriate expertise needed for the specific review. On-line reviewers will include private and public sector experts according to the Prescott Grant Program's proposal categories: Category A proposals will be reviewed by experts from fields such as marine mammal biology, rehabilitation,

animal husbandry, diagnostic medicine, veterinary medicine, medical science, conservation biology, and education and outreach; Category B proposals will be reviewed by experts in fields such as toxicology, epidemiology, veterinary medicine, veterinary pathology, virology, marine mammal biology, infectious diseases, physiology, acoustics, education, outreach, genetics, conservation biology, and other biological and physical sciences; and Category C proposals will be reviewed by experts in fields such as construction, water systems, life support systems, curation, animal care, architecture, structural engineering, facility managers, and marine mammal biology. Each on-line reviewer will be required to certify that they do not have a conflict of interest concerning the proposal(s) they are reviewing prior to their review.

To determine the technical soundness and feasibility of each proposal, the on-line reviewers will provide an independent review using the weighted criteria outlined in Section IV. D. below. Depending on the type of activities proposed, on-line reviewers may focus their review on issues such as the likelihood of meeting milestones and achieving anticipated results in the time-line specified in the statement of work, the sufficiency of information to evaluate the project technically, the strengths and weaknesses of the technical design relative to securing productive results, and the inclusion of quality assurance considerations. Each proposal will be reviewed by at least one on-line reviewer. On a scale of 0–100, the reviewers will score the proposal in each criteria. An average, weighted score will be generated from each review using the numeric score per criteria and the weights assigned to each criteria (see Section IV. D. for numeric scores and assigned weights per criteria). Along with the peer review scores, these on-line review scores will be used in determining whether proposals will advance to merit review (i.e., each proposal scoring greater than 60 points in either the on-line or peer review will go on to merit review).

C. Peer Review

After the initial screening, each accepted proposal will undergo a peer review by participants in the U. S. marine mammal stranding network. Peer reviewers will be asked to evaluate individual proposals based on the proposal category and funding priorities identified by the applicant, review criteria, and the specific technical evaluation from on-line reviews. The proposal categories (i.e., Category A, B, or C) and the geographic location of proposed activities will be used in selecting appropriate peer reviewers. Scoring and commenting on each proposal will be completed during these meetings. In addition, a summary of panel comments and discussion will be generated for each proposal. The peer review results will be used to numerically rank the proposals (based on the average weighted score of each proposal) and provide programmatic and regional stakeholder comments on each proposal. Each peer reviewer will be required to certify that they do not have a conflict of interest concerning the proposal(s) they are reviewing prior to their review.

To determine the appropriateness of each proposal to the Prescott Grant Program's proposal categories and funding priorities, the peer reviewers will provide independent reviews using the weighted criteria outlined below (Section IV. D.). Depending on the type of activities proposed, peer reviewers will be asked to focus their review on issues such as the likelihood of meeting milestones and achieving anticipated results in the time-line specified in the statement of work, the contribution of potential outcomes, results, or products to the marine mammal stranding and rehabilitation communities, and the amount of collaboration with other stranding network participants. Each proposal will be reviewed by at least 3 peer reviewers. On a scale of 0–100, the reviewers will score the proposal in each criteria outlined in Section IV. D. below. An average, weighted score will be generated for each proposal using the numeric score per criteria and the weights assigned to each criteria (see Section IV. D. for numeric scores and assigned weights per criteria). All proposals will be numerically ranked based on this average, weighted score.

D. Review Criteria

1. Soundness of Project Goals, Objectives, and Activities

Proposals will be evaluated on clear identification of project goals and objectives and the ability to link those goals and objectives to project activities, including protocols and methods proposed, and the applicability of the project's goals and objectives to the Prescott Grant Program's proposal categories and funding priorities. All reviewers will consider the potential environmental impacts (e.g., water quality, air quality, waste disposal, etc.) of the proposed activities. On-line reviewers will consider:the likelihood of meeting milestones and achieving anticipated results in the time-line specified in the statement of work; the sufficiency of information to evaluate the project technically; if such information is sufficient, the strengths and weaknesses of the technical design relative to securing productive results; and if data collection is proposed, the inclusion of quality assurance considerations. In addition to technical aspects of the proposal, peer reviewers will focus on:the contribution of potential outcomes, results, or products to the marine mammal stranding and rehabilitation communities; and, the amount of collaboration with other stranding network participants. (Numeric scores from 1–100; Assigned weight of 50 percent)

2. Adequacy of Project Management

The management of the project will be evaluated based on the adequacy of the proposed project management plan in overseeing the technical aspects and implementation of the work plan as delineated in the proposal's Statement of Work. Reviewers will also review previous, related experiences of the applicant and qualifications of the project's Principal Investigator, Co-investigator(s) and other personnel (i.e., designated contractors, consultants, and Cooperators). Review of the proposal's description of financial accounting systems and grants administration oversight will also be ephasized. Consideration will also be given to previous awards received by the Principal Investigator and outcomes, results, or products resulting from such awards. (Numeric scores of 1–100; Assigned weight of 25 percent)

3. Identification and Suitability of Project Performance Evaluation Methods

Proposals will be scored based on their clear identification of performance evaluation methods and the suitability of those methods for evaluating the success or failure of the project in terms of meeting its original goals and objectives. For Category A and B proposals these methods should include quantitative or qualitative criteria to evaluate relative success of failure of project activities. For Category C proposals these methods should also include criteria for measuring success or failure in meeting project time lines within budget and success of failure in complying with environmental and safety standards for construction activities. (Numerical scores of 1–100; Assigned weight of 10 percent)

4. Justification, Clarity, and Allocation of Project Costs

The proposed costs and overall budget of the project will be evaluated in terms of the work proposed. The itemized costs and the overall budget must be justified, clear to the reviewer, and consistent with fair market values for similar items or services. (Numeric scores of 1–100; Assigned weight of 15 percent)

E. Merit Review

After proposals have undergone review, the MMHSRP staff, NMFS Regional Administrators (RAs) and Office Directors (ODs) will conduct a merit review in consultation with the Marine Mammal Commission and U. S. Fish and Wildlife Service, to consider the review results and develop recommendations for funding. Only those proposals having an average weighted score higher than 60 points in either the on-line or peer review will be evaluated.

In order to make recommendations regarding equitable distribution of funds among regions and to justify any discrepancies between the reviewers' comments and the merit reviewers' recommendations, merit reviewers will review the on-line and peer review comments, discrepancies between the on-line and peer review average, weighted scores, numeric ranking of proposals by the peer reviewers, required proposal elements, stranding statistics by region (i.e., geographic need for proposed projects), environmental assessments or documentation, and the number of applications received by region and by funding year.

Equitable distribution will be determined by review of proposals by stranding region using the best available data on episodic, anomalous or unusual stranding events, average annual strandings and mortalities, and sizes of marine mammal populations within each region. Merit reviewers will also consider the actual stranding statistics per region for the previous 5 non-El Nino years and for the last El Nino year. After proposals are prioritized within the regions using the best available data, preference will be given to facilities within each region that have established records for rescuing or rehabilitating sick or stranded marine mammals and whose activities are planned so that they minimize any potential adverse impacts on the environment.

The merit review team will prepare a written justification for any recommendations for funding that fall outside the peer reviewer's numerical ranking or the equitable distribution order, and for any cost adjustments. In addition, the merit review team will prepare written recommendations regarding additional policy factors that the NMFS AA should consider in making final funding selections.

F. Final Selection Procedures

The NMFS AA will review the funding recommendations from the merit review, comments of the reviewers, and select the projects to be funded. In making the final selections, the AA will consider costs, geographical distribution, financial need, duplication with other federally funded projects, potential environmental impacts, equitable distribution of funds among the designated stranding regions, and other policy factors. As a result, awards are not necessarily made to the highest technically ranked projects.

G. Project Funding

The final, exact amount of funds, the scope of work, and terms and conditions of a successful award will be determined in pre-award negotiations between the applicant and NOAA/NMFS representatives. The funding instrument (grant or cooperative agreement) will be determined by NOAA Grants Management Division. If the proposed work entails substantial involvement between the applicant and NMFS, a cooperative agreement will be utilized. Work requiring substantial involvement between the applicant and NMFS includes the planning and upgrading of rehabilitation facilities, the development of protocols, and other types of projects where a high level of cooperation is necessary to ensure that the applicant is achieving the broader goals of the MMHSRP. Applicants should not initiate any project in expectation of Federal funding until they receive a grant award document signed by an authorized NOAA official in the Grants Management Division.

V. Administrative Requirements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation. Copies of this notice can be obtained from the Government Printing Office Website:http://www.access.gpo.gov/su__docs /aces /aces140.html

or the Prescott Stranding Grants Program Website:

http://www.nmfs.noaa.gov /prot__res/PR2/ Health__and__ Stranding__ Response__ Program/ Prescott.html

If costs are incurred prior to receiving an award agreement signed by an authorized NOAA official, applicants do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that applicants have received, the Department of Commerce has no obligation to cover pre-award costs.

Proposals that are not accepted for funding in the 2003/2004 cycle will be filed in the Prescott Grant Program office for a minimum of 3 years from date of receipt.

A. Obligations of Recipients (Successful Applicants)

Applicants awarded a grant or cooperative agreement for a project must:

1. Manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

2. Keep records sufficient to document any costs incurred under the award, and allow access to these records for audit and examination by the Secretary of Commerce, the Comptroller General of the United States, or their authorized representatives; and, submit financial status reports (SF 269) to NOAA's Grants Management Division in accordance with the award conditions.

3. Submit semi-annual and annual reports, and for projects extending beyond a year, final reports within 90 days after completion of each project, to the individual identified as the NMFS Program Officer in the funding agreement. The final report must describe the project and include an evaluation of the work performed and the results and benefits in sufficient detail to enable us to assess the success of the completed project.

We are committed to using available technology to achieve the timely and wide distribution of final reports to those who would benefit from this information. Therefore, we request submission of final reports in electronic format, in accordance with the award terms and conditions, for publication on the NMFS Protected Resources Home Page. Awardees can charge the costs associated with preparing and transmitting their final reports in electronic format to the grant award.

4. In addition to the final report, we request that awardees submit any publications printed with award funds (such as manuals, surveys, etc.) to the NMFS Program Officer for dissemination to the public. These publications should be submitted either

as three hard copies or in an electronic version. Peer-reviewed publications published with or without award funds and manuscripts published without award funds are requested to be submitted to NMFS; however, these publications will not be disseminated to the public.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts (5 U.S.C. section 553(a)(2)).

Furthermore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act (5 U.S.C. section 601 et seq).

This action has been determined to be not significant for purposes of Executive Order 12866.

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, 424C, 424D, 269, and SF-LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0041, 0348–0042, 0348–0039, and 0348–0046.

This document also contains collection-of-information requirements that have been approved by OMB under control number 0648–0178. Public reporting burden for the registration of the salvage of dead marine mammals, or for periodic reports by state or local government officials or employees is estimated to average 20 minutes per individual response, response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **FOR FURTHER INFORMATION CONTACT**).

Dated:February 3, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–3290 Filed 2–5–03; 4:23 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020503B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee in February, 2003. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Tuesday, February 25, 2003, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Colonial, One Audubon Road, Wakefield, MA 0880; telephone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Research Steering committee will have a discussion of plans to solicit fishermen's input on collaborative research focusing on habitat-related issues. They will follow up on discussion concerning the NMFS experimental fishing permit program and its impact on collaborative research. Also on the agenda will be the role of the Research Steering Committee in developing Requests for Proposals, as well as reviewing and tracking research projects funded through the sea scallop research set-aside.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: February 5, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–3292 Filed 2–10–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

[CFDA No.: 84.031S]

Office of Postsecondary Education; Developing Hispanic-Serving Institutions (HSI) Program

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003 competition; correction.

Notice to Applicants: On January 29, 2003 a notice inviting applications for new awards for the Hispanic-Serving Institutions (HSI) Program was published in the **Federal Register** (68 FR 4454 through 4456). On page 4454, the Deadline for Intergovernmental Review of ''April 30, 2003'' is corrected to read ''May 2, 2003''. Additionally, in column 3 on the same page, the applicability of the ''Page Limit'' section is corrected to read as follows: ''The page limit does not apply to the application cover sheet (ED 424), Dual Submission Certification, the one-page abstract, the Certification Regarding Collaborative Arrangement (ED 851S–8), the Hispanic-Serving Institutions Assurance Form (ED 851S–7), and the Cooperative Arrangement Form (ED 851S–1). The page limit does, however, apply to all remaining parts of the application.''

For Applications and Further Information Contact: Louis Venuto, U.S. Department of Education, Title V, Developing Hispanic-Serving Institutions Program, 1990 K Street NW., 6th floor, Washington, DC 20006–8513. Telephone: (202) 502–7763 or via Internet: *title.five@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative

format (*e.g.* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Applications and Further Information Contact.*

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

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Program Authority: 20 U.S.C. 1101–1101d, 1103–1103g.

Dated: February 6, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–3396 Filed 2–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Reauthorization of the Higher Education Act; Public Hearing

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of open meeting.

SUMMARY: This notice includes the schedule and proposed agenda of the upcoming public hearing regarding proposals for the reauthorization of the Higher Education Act (HEA). The Office of Postsecondary Education (OPE) invites comments from the public regarding proposals for amending and extending the HEA. The meeting will take place in Kansas City, Missouri during the annual Federal Student Aid Spring Update meeting.

Assistance to Individuals with Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** no later than Wednesday, February 26, 2003. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

DATES: Friday, March 7, 2003.

Location: Westin Crown Center, Century Ballroom, One Pershing Road, Kansas City, MO, 64108.

Times: 10 a.m.–4:30 p.m.

Meeting Format: This meeting will be held according to the following schedule:

1. Time: 10 a.m.–12:30 p.m.
2. Time: 1:30 p.m.–4:30 p.m.

Attendees: If you would like to attend the meeting listed above, we ask that you register with the Office of Postsecondary Education by e-mail or fax to the address listed under **ADDRESSES**. Please provide us with your name and contact information.

Participants: The hearing will begin with panels of invited speakers. After the presentations by the invited speakers, there will be time for comments from the public.

If you are interested in participating in the public comment period, we request that you reserve time on the agenda of the hearing by contacting the Office of Postsecondary Education by e-mail or fax. Please include your name, the organization you represent if appropriate, and a brief description of the issue you would like to present. Participants will be allowed approximately three to five minutes to present their comments, depending on the number of individuals who reserve time on the agenda. At the hearing, participants are also encouraged to submit two written copies of their comments. Persons interested in making comments are encouraged to address the issues and questions discussed under **SUPPLEMENTARY INFORMATION**.

Given the expected number of individuals interested in providing comments at the hearing, reservations for presenting comments should be made as soon as possible. However, please submit your reservation to comment at the hearing no later than February 28, 2003. Requests to speak during the public comment period of the hearing will be granted on a first-come, first-served basis.

Persons who are unable to obtain reservations to speak during the meeting are encouraged to submit written comments. Written comments will be accepted at the meeting site or may be mailed to the Office of Postsecondary Education at the address listed under **ADDRESSES**.

ADDRESSES: Submit all requests to reserve time on the agenda or to submit written comments to OPE using one of the following methods:

1. E-mail. We encourage you to submit your request to reserve time on the agenda or written comments through the Internet to the following address: *HEA.2004@ed.gov.*

2. *Facsimile.* You may submit your request to reserve time on the agenda by facsimile at (202) 502–7875.

3. *Mail.* You may submit your written comments to Jeffrey R. Andrade, Deputy Assistant Secretary for Policy, Planning, and Innovation, Office of Postsecondary Education, 1990 K Street, NW., Room 8046, Washington, DC 20006 ATTENTION: HEA Reauthorization. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the hearing, please contact Amy Raaf at (202) 502–7561 or Dan Iannicola, Jr. at (202) 502–7719 or via Internet: *amy.raaf@ed.gov, dan.iannicola@ed.gov.*

To obtain additional information about hotel reservations and the agenda for the Federal Student Aid Spring Update meeting, visit Federal Student Aid's Web site at: *http://edeworkshop.ncspearson.com/KansasCity.htm.*

SUPPLEMENTARY INFORMATION: As the 108th Congress begins to hold hearings on reauthorization of the Higher Education Act and the Administration begins to work on its proposals for amending the HEA, we are interested in hearing from the higher education community and other members of the public about ways to ensure that the significant amounts of funding for the programs authorized in the HEA are wisely spent. We are also looking to build upon successful program results in providing access to students, maintaining high levels of student retention in higher education programs and improving the quality of postsecondary education.

Many of the programs authorized under the HEA work well and provide

a strong foundation of support for higher education. Some need to be made more effective in achieving better results. As part of reauthorization, we are interested in hearing how to make the HEA programs work better and complement the President's efforts to ensure that all Federal programs focus on stronger accountability for results. The goal of this hearing is to receive proposals for solutions to the numerous challenges that are currently facing postsecondary education. Therefore, comments are encouraged in the following priority areas:

a. How can we improve access and promote additional educational opportunity for all students, especially students with disabilities, within the framework of the HEA? How can the Federal Government through the HEA encourage postsecondary students to make consistent progress in the completion of their programs of study and to obtain their certificates or degrees?

b. How can existing HEA programs be changed and made to work more efficiently and effectively? In what ways do they need to be adapted or modified to respond to changes in postsecondary education that have occurred since 1998?

c. How can HEA programs be changed to eliminate any unnecessary burdens on students, institutions, or the Federal Government, yet maintain accountability of Federal funds? How can program requirements be simplified, particularly for students?

d. How can we best prioritize the use of funds provided for postsecondary education and the benefits provided under the HEA programs? How can the significant levels of Federal funding already provided for the HEA programs best help to further the goals of improving educational quality, expanding access, and ensuring affordability?

e. Are there innovative and creative ways the Federal Government can integrate tax credits, deductions, and tax-free savings incentives with the Federal student aid programs in the HEA to improve access to and choice in postsecondary education?

f. What results should be measured in each HEA program to determine the effectiveness of that program?

g. Are there other ideas or initiatives that should be considered during reauthorization that would improve the framework in which the Federal Government promotes access to postsecondary education and ensures accountability of taxpayer funds?

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Note: The official version of the document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Dated: February 6, 2003.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 03–3397 Filed 2–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

DOE Response to Recommendation 2002–3 of the Defense Nuclear Facilities Safety Board, Requirements for the Design, Implementation, and Maintenance of Administrative Controls

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board Recommendation 2002–3, concerning the requirements for the design, implementation, and maintenance of administrative controls at Department of Energy Defense Nuclear Facilities was published in the **Federal Register** on December 20, 2002 (67 FR 77963). In accordance with section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Secretary transmitted the following response to the Defense Nuclear Facilities Safety Board on January 31, 2003.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before March 3, 2003.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Beverly Cook, Assistant Secretary, Office of Environment, Safety, and Health, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC on February 3, 2003.

Mark B. Whitaker, Jr.,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Secretary of Energy

Washington, DC 20585

January 31, 2003.

The Honorable John T. Conway, Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004

Dear Mr. Chairman: The Department of Energy (Department) acknowledges receipt of the Defense Nuclear Facilities Safety Board's (Board) Recommendation 2002–3, Requirements for the Design, Implementation, and Maintenance of Administrative Controls. Recommendation 2002–3 was issued on December 11, 2002 and published in the **Federal Register** on December 20, 2002. The Department agrees that we must assure the critical assumptions used in defining and analyzing the basis for safe operations are properly developed, appropriately implemented, and effectively preserved. If the critical assumptions depend on administrative controls, we agree those controls should be treated appropriately. Therefore, the Department accepts the recommendation and will develop an implementation plan to respond to the recommendation.

The Department of Energy's (DOE) implementation plan will address how we will review existing DOE requirements and guidance to determine where further consolidation or clarification is needed to assure proper focus on those administrative controls that perform important safety functions similar to safety-class or safety-significant controls. Additionally, the plan will address how we will evaluate safety basis documents to identify administrative controls critical to preventing or mitigating accident consequences. We will strengthen our processes to ensure those critical administrative controls are properly implemented.

I have asked the Assistant Secretary for Environment, Safety and Health, Beverly Cook, to ensure the successful completion of the implementation plan we will develop in response to your recommendation. Mr. Richard Black, Director of the Office of Nuclear and Facility Safety Policy, is the responsible manager for the preparation of the Department's implementation plan.

Sincerely,

Spencer Abraham.

[FR Doc. 03–3374 Filed 2–10–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC03–47–001 and ES03–20–001]

Dynegy Inc.; Notice of Filing

February 5, 2003.

Take notice that on January 31, 2003, Dynegy Inc. (Dynegy), on behalf of certain of its public utility subsidiaries (Applicants), filed with the Federal Energy Regulatory Commission (Commission) an amendment to its January 13, 2003, application pursuant to section 203 of the Federal Power Act (FPA) for authorization of a disposition of jurisdictional facilities pursuant to an intra-corporate reorganization. In its January 13, 2003, application, Dynegy sought authorization to create one or more new intermediate holding companies between Dynegy Holdings Inc. and its indirect public utility subsidiaries. Dynegy also requested that the Commission grant Dynegy Power Marketing, Inc. blanket authority pursuant to FPA section 204 to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person. By the current amendment to the January 13, 2003, application, Dynegy seeks to alter its proposed corporate structure by transferring ownership in certain applicants to a newly-formed indirect, wholly-owned subsidiary of Dynegy.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: February 13, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3358 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–14–002]

Ameren Services Company, American Transmission Systems, Incorporated, Northern Indiana Public Service Company, GridAmerica LLC, GridAmerica Holdings, Inc.; Notice of Filing

February 5, 2003.

Take notice that on January 31, 2003, GridAmerica LLC, GridAmerica Holdings, Inc., as Managing Member of GridAmerica LLC, and the GridAmerica Companies, which consist of Ameren Services Company, as agent for its electric utility affiliates Union Electric Company d/b/a AmerenUE and Central Illinois Public Service Company d/b/a AmerenCIPS, American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp. and Northern Indiana Public Service Company, filed with the Federal Energy Regulatory Commission (Commission) a joint amendment to the request for authorization to transfer functional control over transmission facilities pursuant to section 203 of the Federal Power Act and 18 CFR part 33. The amendment is being submitted in compliance with the Commission's December 19, 2002, Order in Ameren Services Co., 101 FERC § 61,320, at P 185 (2002).

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: February 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3357 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–13–000]

Northwest Pipeline Corporation; Notice of Site Visit

February 5, 2003.

On February 19, 2003, the staff of the Office of Energy Projects (OEP) will conduct a site visit of Northwest Pipeline Corporation's (Northwest's) proposed Clackamas River Project in Clackamas County, Washington. The site visit will begin at 1 p.m. at Northwest's Oregon City Compressor Station south of the Clackamas River. Both sides of the Clackamas River crossing will be visited. Representatives of Northwest, the U.S. Fish and Wildlife Service, the NOAA Fisheries, the U.S. Army Corps of Engineers, and the State of Oregon may accompany the staff. Any person interested in attending the site visit should meet with FERC staff at 1 p.m. at the Oregon City Compressor Station and must provide their own transportation.

The address of the Oregon City Compressor Station is 15124 South Springwater Road, Oregon City, OR 97045, phone number (503) 631–2163 x 2460. This station can be accessed by using the Carver exit off Highway 212/224. For further information about the

project, please contact the Commission's Office of External Affairs at (202) 502–8004 or toll free at 1–866–208–3372.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3355 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–32–000]

Northwest Pipeline Corporation; Notice of Interagency Meeting and Site Visit

February 5, 2003.

On February 18, 2003, the staff of the Office of Energy Projects (OEP) will conduct an interagency meeting and site visit of Northwest Pipeline Corporation's (Northwest's) proposed White River Replacement Project in King County, Washington. The purpose of the meeting and site visit is to facilitate interagency review and discussion of Northwest's project design and mitigation of environmental impacts. The meeting will begin at 1 p.m. inside the Muckleshoot Indian Tribe's Department of Planning and Public Works. Representatives of Northwest, the Muckleshoot Indian Tribe, the U.S. Fish and Wildlife Service, the NOAA Fisheries, the U.S. Army Corps of Engineers, and the State of Washington may accompany the staff. The interagency meeting will be followed by a site visit to both sides of the White River crossing. Any person interested in attending the site visit should meet with FERC staff at 3:30 p.m. in the parking lot of the Muckleshoot Indian Tribe's Department of Planning and Public Works. Those planning to attend must provide their own transportation.

The location of the Muckleshoot Indian Tribe's Department of Planning and Public Works is 40320 Auburn-Enumclaw Road SE. (State Route 164) in Auburn, Washington, 98092, phone number (360) 802–1922. For further information about the project, please contact the Commission's Office of External Affairs at (202) 502–8004 or toll free at 1–866–208–3372.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3356 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–13–006]

Portland Natural Gas Transmission System; Notice of Compliance Filing

February 5, 2003.

Take notice that on January 29, 2003, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to become effective on March 1, 2003:

Fourth Revised Sheet No. 100—Alternate Third Revised Sheet No. 100
Second Revised Sheet No. 504—Alternate First Revised Sheet No. 504
First Revised Sheet No. 505

PNGTS states that the purpose of this filing is to comply with the Commission's January 14, 2003, order in the above-captioned docket, which approved an uncontested settlement filed by PNGTS on October 25, 2002. PNGTS states that the settlement resolved all issues set for hearing in this general rate proceeding, and that the Commission's January 14, 2003, order approving the settlement also approved the tendered tariff changes, which were submitted on pro forma tariff sheets as part of the settlement. The Commission's January 14, 2003, order directed PNGTS to file the instant tariff sheets within 15 days of the date of that order.

PNGTS states that copies of this filing are being served on all jurisdictional customers, applicable state commissions, and participants in Docket No. RP02–13–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: February 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3361 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RT01–99–000, RT01–99–001, RT01–99–002, RT01–99–003, RT01–86–000, RT01–86–001, RT01–86–002, RT01–95–000, RT01–95–001, RT01–95–002, RT01–2–000, RT01–2–001, RT01–2–002, RT01–2–003, RT01–98–000, and RT02–3–000]

Regional Transmission Organizations; Bangor Hydro-Electric Company, et al.; New York Independent System Operator, Inc., et al.; PJM Interconnection, L.L.C., et al.; PJM Interconnection, L.L.C., ISO New England, Inc.; New York Independent System Operator, Inc.; Notice

February 5, 2003.

Take notice that PJM Interconnection, L.L.C., New York Independent System Operator, Inc. and ISO New England, Inc. have posted on their internet websites charts updating their progress on the resolution of ISO seams.

Any person desiring to file comments on this information should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such comments should be filed on or before the comment date. Comments may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: February 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3363 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–244–000]

Southern LNG Inc.; Notice of Proposed Changes to FERC Gas Tariff

February 5, 2003.

Take notice that on January 29, 2003, Southern LNG Inc. (''SLNG'') tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Sixth Revised Sheet No. 5
Sixth Revised Sheet No. 6

SLNG states that the revised sheets track maintenance costs associated with the turning basin and berths for ships calling on the LNG import terminal on Elba Island, Georgia, pursuant to the tracker mechanism of its tariff approved as part of the settlement in Docket No. RP02–129. SLNG states that this filing increases the dredging surcharge from the current $0.0428 per Dth to $0.0529 per Dth. SLNG proposes to make the increased surcharge effective March 1, 2003, as provided in the tariff sheets and the Commission's order approving the settlement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed n accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: February 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3362 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2009–018–North Carolina/Virginia]

Virginia Electric and Power Company; Notice

February 5, 2003.

The following Commission staff were assigned to help facilitate resolution of environmental and related issues associated with development of the Roanoke Rapids–Lake Gaston Project license application that was filed on January 28, 1999. The Commission staff will continue to be available to assist the parties, if requested, to resolve issues and facilitate development of a comprehensive settlement agreement during the pendency of the license application. However, the ''separated staff'' will take no part in Commission review of the application, or deliberations concerning the merits of the application.

Office of Energy Projects

Ronald McKitrick
Monte Terhaar

Different Commission ''advisory staff'' will be assigned to process the license application, including providing advice to the Commission with respect to it. Separated staff and advisory staff are prohibited from communicating with one another concerning this license application.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3359 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–379–000 and CP02–380–000]

Southern LNG, Inc.; Notice of Availability of the Environmental Assessment for the Proposed Elba Island Expansion Project

February 5, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the liquefied natural gas (LNG) facilities proposed by Southern LNG, Inc. (Southern LNG) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the proposed project which includes expansion of the existing Elba Island LNG import terminal in Chatham County, Georgia. Southern LNG proposes to:

—Construct an LNG unloading slip cut into Elba Island with two ship unloading docks;
—Construct a 1,000,000-barrel double walled LNG storage tank;
—Construct two boil-off gas compressors;
—Construct two first-stage (booster) LNG pumps;
—Construct a recondenser vessel;
—Construct three second-stage LNG pumps;
—Construct three submerged combustion vaporizers; and
—Construct a motor control center.

The proposed facilities would expand the storage and sendout capacity of Southern LNG's existing LNG import terminal in Chatham County, Georgia. The proposal would: (1) Expand the storage capacity of the terminal; and (2) increase the sustainable daily sendout capability to 806 million standard cubic feet per day (MMscf/d) and its peaking capacity to 1,215 MMscf/d. Southern LNG seeks import authorization in Docket No. CP02–379–000.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, State and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

—Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
—Label one copy of the comments for the attention of Gas Branch 1, PJ 11.1;
—Reference Docket No. CP02–380–000; and
—Mail your comments so that they will be received in Washington, DC on or before March 7, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding.*See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to rule 214 of the Commission's rules of practice and procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or at *FERConlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3354 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

February 5, 2003.

Take notice that the following hydroelectric subsequent license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License for a Minor Water Power Project.

b. *Project No.:* P–7264–010.

c. *Date filed:* January 22, 2003.

d. *Applicant:* Fox River Paper Company and N.E.W. Hydro, Inc.

e. *Name of Project:* Middle Appleton Dam Hydroelectric Project.

f. *Location:* On the Lower Fox River, Outagamie County, Wisconsin. This project would not use Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. John Rom, Manager, Fox River Paper Company, P.O. Box 2215, Appleton, Wisconsin 54913, 920–733–7341 or Mr. Arie DeWaal, Mead and Hunt, Inc., 6501 Watts Road, Madison, Wisconsin 53719, 608–273–6380.

i. *FERC Contact:* John Ramer, *john.ramer@ferc.gov*, (202) 502–8969.

j. *Cooperating Agencies:* We are asking Federal, State, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an factual basis for complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days after the application filing (*i.e.*, by March 22, 2003) and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* March 22, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link. After logging into the eFiling system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process.

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The Middle Appleton Dam Hydroelectric Project consists of the following existing facilities: (1) A 372-foot-long by about 20-foot-high dam, topped with 15 functional and one non-functional, 20-foot-wide by 10-foot-high, steel Taintor gates; (2) a 35.5-acre reservoir with a gross storage capacity of about 195-acre feet; (3) two power channels, one about 500-feet-long by 40-foot-wide, and another 1700-foot-long and from 120 foot-to 200 foot-wide; (4) three powerhouses containing seven open-flume Francis turbines with a total maximum hydraulic capacity of 1,650 cubic feet per second (cfs) and seven generating units with a total installed generating capacity of 1,190 kilowatts (kW) and producing a total of 8,635,000 kilowatt hours (kWh) annually; (5) two transformer banks and one 4.16-kilovolt (kV) transmission line; along with (6) appurtenant facilities, such as govenors and electric switchgear. The dam and existing project facilities are owned by Fox River Paper Company and N.E.W. Hydro, Inc.

o. A copy of the application is on file with the Commission and is available

for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''FERRIS'' link—select ''Docket #'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TYY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following hydro licensing schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA issued in the spring of 2004.

Issue Acceptance or Deficiency Letter: June 2003
Issue Scoping Document: July 2003
Notice that application is ready for environmental analysis: October 2003
Notice of the availability of the EA: March 2004
Ready for Commission decision on the application: May 2004

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3360 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Unlicensed Project Review and Soliciting Comments, Protests and Motions To Intervene

February 5, 2003.

The following notice was issued by the Commission on December 30, 2002, and appeared in the **Federal Register**. The notice was inadvertently omitted from a newspaper publication.

Take notice that the following review has been initiated by the Commission:

a. *Review Type:* Unlicensed project.

b. *Docket No:* UL02–2–000.

c. *Owner:* Indian River Power Supply, LLC.

d. *Name of Project:* Russell/Westfield Paper Company Dam Project.

e. *Location:* The project is located on the Westfield River, in the town of Russell, Hampden County, Massachusetts. This project does not occupy Federal lands or tribal lands.

f. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov*.

g. *Deadline for filing comments, protests, and/or motions to intervene:* March 5, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov*.

Please include the docket number (UL02–2–000) on any comments, protests, or motions to intervene filed.

h. Description of Project: The Russell/Westfield Paper Company Dam Project, a run-of-river project, consists of: (1) A reservoir of 10 acres in area; (2) an existing 150-foot-long, 4-to-22-foot-high concrete gravity dam; (3) a powerhouse of concrete and wood construction, containing two horizontal generator units with a combined output of 705 kW; (4) two steel penstocks, each 7.625 feet in diameter and 60 feet long; (5) an earth embankment with a sheetpile core, along the left bank of the river; and (6) appurtenant facilities.

Pursuant to section 23(b)(1) of the Federal Power Act (FPA), 16 U.S.C. 817(1), a non-Federal hydroelectric project must (unless it has a still-valid pre-1920 Federal permit) be licensed if it (1) is located on a navigable water of the United States; (2) occupies lands of the United States; (3) utilizes surplus water or water power from a government dam; or (4) is located on a body of water over which Congress has Commerce Clause jurisdiction, project construction occurred on or after August 26, 1935, and the project affects the interests of interstate or foreign commerce. The purpose of this notice is to gather information to determine whether the existing project meets any or all of the above criteria, as required by the FPA.

i. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

j. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified comment date for the particular application.

k. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Docket Number of the particular review.

l. Agency Comments—Federal, state, and local agencies are invited to file comments on the described review. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Magalie R. Salas,

Secretary.

[FR Doc. 03–3364 Filed 2–10–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7451–2]

EPA Science Advisory Board; Notification of Public Advisory Committee Meetings; Science and Technology Review Panel—Notification of Meeting Location

SUMMARY: This notice supplements the information published in the **Federal Register** (67 FR 79912) on December 31, 2002 by providing the location for the following meeting of a review panel of the U.S. EPA Science Advisory Board.

Meeting Date and Time: The Science and Technology Review Panel (STRP) of the U.S. Environmental Protection Agency's Science Advisory Board will conduct a public meeting on February 24–25, 2003. The meeting will begin on February 24, at 9:30 am and adjourn no later than 5:30 pm that day. On February 25, 2003, the meeting may begin as early as 8 am and adjourn no later than 5 pm.

Meeting Location: The meeting will take place at the Hotel Washington, 515 15th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further details concerning this review, including background information, availability of meeting materials, opportunity for public comment, and the charge to the STRP, please refer to the initial **Federal Register** notice (67 FR 79912), dated December 31, 2002. Information concerning related public teleconference meetings is also contained in that notice.

Dated: January 29, 2003.

Vanessa Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–3419 Filed 2–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL—7451–3]

EPA Science Advisory Board; Notification of Radiation Advisory Committee Meeting; Request for Comments on the Consultative Panel

Purpose of this Notice: To: (1) Announce a public meeting of a Federal advisory committee, and (2) solicit public comment on the proposed consultative panel.

1. Meeting of the Radiation Advisory Committee—(February 25–27, 2003)

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Radiation Advisory Committee (RAC) of the U.S. EPA Science Advisory Board (SAB) will meet on February 25–27, 2003 to conduct a consultation on two supplements being developed for the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM). The RAC will also conduct some general committee business. It will receive briefings and program updates on a variety of EPA Office of Radiation and Indoor Air (ORIA) projects and it will discuss future projects. The meeting is open to the public, however, seating is limited and available on a first-come basis. *Important Notice:* Documents that are the subject of SAB reviews or consultations are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents generated by the SAB and the relevant Program Office is included below.

The meeting will begin on Tuesday, February 25 at 9 a.m. and adjourn no later than 5:30 p.m. that day. On Wednesday, February 26, the meeting will begin no earlier than 8:30 a.m. and adjourn no later than 5:30 p.m. that day. On Thursday, February 27, 2003, the meeting will begin no earlier than 8:30 a.m. and adjourn no later than 3:30 p.m. that day. All times noted are Eastern Time. The meeting will take place in the EPA Headquarters Building East Conference Room 1117A, 1201 Constitution Avenue, NW., Washington, DC 20004. For further information concerning the meeting, please contact the individuals listed at the end of this **Federal Register** notice.

Availability of the Meeting Materials: Materials for the meeting will be available at the meeting. The proposed agenda for the meeting will be posted approximately 10 calendar days prior to the meeting at the SAB's Web site (*http://www.epa.gov/sab*). For questions and information concerning the agenda, please contact Dr. K. Jack Kooyoomjian, Designated Federal Officer for the SAB's RAC at the locations provided below in this notice. For information pertaining to the MARSSIM consultation and ORIA Program Office information, please contact Dr. Mary E. Clark, Assistant Director, ORIA at the locations provided below in this notice.

2. Background on the Consultation

EPA's ORIA has requested the SAB to provide a consultation on two supplements being developed for the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM). [The first supplement will be the Multi-Agency Radiation Survey and Assessment of Materials and Equipment (MARSAME), and the second supplement will be the Multi-Agency Radiation Survey and Assessment of Subsurface Soils (MARSASS)]. These projects reflect planning for major extensions of a multi-Agency initiative to provide federal guidance on determining whether a radioactively-contaminated site (including equipment and subsurface soils) has been adequately cleaned up.

The original MARSSIM, which was released in December, 1997, was reviewed by the SAB's RAC. The SAB report on the original review of the MARSSIM topic is also available on the SAB Web site under the reports listings (*http://epa.gov/sab/pdf/rac9708.pdf*) as EPA–SAB–RAC–97–008, entitled An SAB Report: Review of the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM), September, 1997. The URL site for the federal MARSSIM which was published after receipt of the SAB advice is *http://www.epa.gov/radiation/marssim/obtain.htm.*

The original scope of MARSSIM was limited to surface soils and building surfaces to expedite the document's release. The SAB's RAN recommended that further expansions of scope be considered for subsequent editions of MARSSIM. The federal MARSSIM workgroup composed of members of the U.S. Environmental Protection Agency (EPA), U.S. Department of Defense (DOD), U.S. Department of Energy (DOE), U.S. Nuclear Regulatory Commission (NRC), and the state of Florida have obtained their respective Agencies' support to expand MARSSIM's scope, as recommended by the SAB, to include survey and assessment of materials and equipment as well as subsurface soils. Prior to preparing two draft documents incorporating these issues, the Federal MARSSIM workgroup will consult with the SAB's RAC so that the best available tools for these survey assessments will be developed.

In the consultation planned for February 25–27, the Agency is seeking advice on whether the technical plans to prepare supplements on subsurface soils and equipment are properly directed, and if there are any items, issues or practical applications that have not been considered that ought to be included by the federal MARSSIM workgroup in the current proposed plans.

3. Solicitation of Public Comment on the Proposed Consultative Panel

A ''consultation'' is one of several types of formal interaction between the Agency and the Science Advisory Board. The purpose of a consultation is to conduct an early discussion between the Agency and the SAB to help articulate important issues in the development of a project. The meeting is public and consists of briefings and discussions. In some cases a partial document, or an early draft may be available to serve as a basis for discussions. A charge is often used, but is less focused than that used in a formal peer review. No consensus advice is sought and no report is generated by the SAB.

To provide the Agency with meaningful input, we have determined that the following expertise, knowledge and experience is needed for the MARSSIM consultation: general expertise in radiological protection and health physics (includes radiation risk); knowledge of collection and detection techniques; statistical methods for radiological applications; knowledge of hydrogeological considerations (includes knowledge of saturated and unsaturated zone transport, fractured flow mechanics, and transport modeling of such phenomena); and knowledge of practical applications of cleanup and

protection procedures. The EPA Science Advisory Board Staff Office has determined that the RAC, a standing committee of the Board, will conduct this consultation since the RAC already has the appropriate expertise without the need for additional expert consultants. Therefore, we are not soliciting additional experts for this consultation.

The SAB Staff Office will post the names and biosketches for members of the consultative Panel on the SAB Web site at: *http://www.epa.gov/sab.* Public comments will be accepted until February 18, 2003 on the information provided. During this comment period, the public will be requested to provide information, analysis or other documentation relevant to the membership of the panel for the Staff Office's final decision. Information, analysis or documentation must be received by Dr. K. Jack Kooyoomjian, the Designated Federal Officer (DFO) no later than February 18, 2003. Please see the address/contact information noted below.

For the EPA SAB, a balanced review panel (*i.e.,* committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Information provided by the public will be considered in the selection of the panel, along with information provided by candidates and information gathered by EPA SAB Staff independently on the background of each candidate (*e.g.,* financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve, and (e) ability to work constructively and effectively in committees.

4. General Information

Providing Oral or Written Comments at SAB Meetings: It is the policy of the EPA Science Advisory Board (SAB) to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the DFO at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers may attend the meeting and provide comment up to the meeting time. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to Dr. K. Jack Kooyoomjian, the DFO for the Radiation Advisory Committee (RAC) at the address/contact information noted below in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution. Should comment be provided at the meeting and not in advance of the meeting, they should be in-hand to the DFO up to and immediately following the meeting. The SAB allows a grace period of 48 hours after adjournment of the public meeting to provide written comments supporting any verbal comments stated at the public meeting to be made a part of the public record.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting, who wish to submit brief oral comments, or have comment on the constitution or balance of Radiation Advisory Committee (RAC) membership, must contact Dr. K. Jack Kooyoomjian, DFO, U.S. EPA Science Advisory Board (1400A), Suite 6450BB, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4557, fax at (202) 501–0582; or via e-mail at *kooyoomjian.jack@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Dr. Kooyoomjian no later than noon Eastern Time five business days prior to the meeting date, February 18, 2003). For information pertaining to the MARSSIM consultation and ORIA Program Office information, please contact Dr. Mary E. Clark, Assistant Director, ORIA at telephone/voice mail at (202) 564–9348, fax at (202) 565–2043, or via e-mail at *Clark.Marye@epa.gov*, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Members of the public desiring additional information about the meeting, such as the agenda, location and directions to the meeting room must contact Ms. Betty Fortune, EPA Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone/voice mail at (202) 564–4534; fax at (202) 501–0582; or via e-mail at *fortune.betty@epa.gov.*

A copy of the draft agenda for the meeting will be posted on the SAB Web site (*http://www.epa.gov/sab*) (under the AGENDAS subheading) approximately 10 days before the meeting.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Dr. Kooyoomjian or Ms. Fortune at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: February 4, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–3420 Filed 2–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7450–7]

Notice of Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended, Ithaca Gun Company Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Notification is hereby given that a Prospective Purchaser Agreement (''PPA'') associated with the Ithaca Gun Company Superfund Site (''Site'') located in Ithaca, New York was executed by the Environmental Protection Agency (''EPA'') and the

United States Department of Justice. This Agreement is subject to final approval after the comment period. The PPA would resolve certain potential EPA claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9606 and 9607, against Fall Creek Redevelopment, L.L.C., the prospective purchaser.

The settlement would require the purchaser to pay $50,000 to EPA. The purchaser intends to use a parcel of land that is part of the Site property to create a commercial/residential development in the Ithaca Falls area in the City of Ithaca, New York. That property, and adjoining Site property which is expected to be dedicated as parkland by the City of Ithaca, are currently subject to an EPA response action under CERCLA for the removal of lead-contaminated soils. The purchaser has agreed to provide EPA with an irrevocable right of access to the Site, to conduct all business in compliance with all applicable local, State, and federal laws and regulations, and to exercise due care at the Site. The purchaser will record a notice with the County Clerk's Office that the property is part of the Site subject to the EPA removal action.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866.

Availability: The proposed settlement is available for public inspection at the U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. A copy of the proposed Agreement may be obtained from George A. Shanahan, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. Comments should reference the ''Ithaca Gun Superfund Site Prospective Purchaser Agreement'' and should be forwarded to Mr. Shanahan, at the above address.

FOR FURTHER INFORMATION CONTACT: George A. Shanahan, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866 or at (212) 637–3171.

Dated: January 29, 2003.

William J. Muszynski,

P.E., Deputy Regional Administrator, EPA Region 2.

[FR Doc. 03–3415 Filed 2–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7450–6]

Proposed CERCLA Section 122(h) Administrative Agreement for Recovery of Response Costs for the Ithaca Gun Company Superfund Site, City of Ithaca, Tompkins County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region II, of a proposed administrative agreement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of response costs concerning the Ithaca Gun Company Superfund Site (''Site'') located in the City of Ithaca, Tompkins County, New York. The settlement requires the settling parties, City of Ithaca (''Ithaca'') and State Street Associates L.P. II (''SSAII'') to pay $150,000 and $165,000, respectively, in reimbursement of EPA's response costs at the Site. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), in exchange for their payments. For 30 days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before March 13, 2003.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Ithaca Gun Company Superfund Site located in the City of Ithaca, Tompkins County, New York, Index No. CERCLA–02–2002–2021. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: George A. Shanahan, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3171.

Dated: January 29, 2003.

William J. Muszynski,

Deputy Regional Administrator, EPA Region 2.

[FR Doc. 03–3414 Filed 2–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7450–5]

Proposed CERCLA Administrative Cost Recovery Settlements: Stickney Avenue Landfill and Tyler Street Dump Superfund Sites

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of two proposed administrative settlements for recovery of past response costs concerning the Stickney Avenue Landfill and Tyler Street Dump Superfund Sites in Toledo, Lucas County, Ohio, between the United States Environmental Protection Agency (''U.S. EPA'' or ''the Agency'') and the following nine settling parties:

International Paper (f.k.a. Chase Bag);
The Dial Corporation;
Earl Scheib of Ohio, Inc.;
Eastman Kodak Company;
Hanson Building Materials America, Inc., (f/k/a Hanson North America, Inc.), as successor to Dura Corporation;
Reichert Stamping Company;
SafetyKleen Envirosystems Company, (f.k.a. Inland Chemical Corporation);
The Sherwin-Williams Company;
Sunoco, Inc. (R&M).

There are two separate settlement agreements. One agreement covers a settlement between U.S. EPA and SafetyKleen Envirosystems Company

(SafetyKleen); the other agreement memorializes the settlement between U.S. EPA and the other nine PRPs. The settlements require the settling parties to pay a total of $244,427 to the Hazardous Substance Superfund. The settlements also include a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a).

For 30 days following the date of publication of this notice, the Agency will receive written comments relating to the settlements. The Agency will consider all comments received and may modify or withdraw its consent to the settlements if comments received disclose facts or considerations which indicate that the settlements are inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the following locations:

Toledo Public Library, Main Branch, Science & Technology Dept., 325 Michigan St., Toledo, OH.

Toledo Public Library, West Toledo Branch, 1320 Sylvania Ave., Toledo, OH.

Toledo Public Library, Point Place Branch, 2744 110th St., Toledo, OH.

Records Center, U.S. EPA, Region 5, 7th Floor, 77 W. Jackson Blvd., Chicago, IL 60604.

DATES: Comments must be submitted on or before March 13, 2003.

Background: The Stickney Site is a 50-acre piece of property located at 3900 Stickney Avenue, in the City of Toledo, Lucas County, Ohio. The Site is approximately 5½ miles upstream from the point where the Ottawa River discharges into Lake Erie. It is bordered to the west and northwest by the Ottawa River, to the north and south by privately-owned property, and to the east by Stickney Avenue. The Stickney site was used for the disposal of municipal waste by the City of Toledo from the late 1950's to about 1966, at which time the landfill was covered with soil, graded, and seeded. In addition to municipal waste, commercial and industrial waste was also disposed at the Site.

The Tyler Site is a 41-acre piece of property located on Tyler Street, in the City of Toledo, Lucas County, Ohio, across the Ottawa River from the Stickney Site (the Ottawa River borders Tyler to the south and east). The Tyler Site is bordered on the north by the F.S. Royster Corporation (Royster) site, by railroad tracks, and by small industrial facilities and residences. The City of Toledo operated the Tyler Site as a municipal co-disposal landfill. According to documents in U.S. EPA files and those of the Ohio Environmental Protection Agency (Ohio EPA), wastes were accepted at the Tyler Site between about 1955 and 1968. Other available records indicate that the Site may have operated as early as 1951 and as late as the early 1970s.

On March 9, 1993, U.S. EPA conducted a Screening Site Inspection (SSI) for the Stickney Site and for the Tyler Site. The SSI indicated that hazardous substances from surface soils and leachate at both Sites were being released or posed a threat of release to the Ottawa River.

Immediately adjacent to the Stickney Site on the south is an area generally referred to as the ''XXKem Site'' (a.k.a. S.M. Allen or Incorporated Crafts). The 13-acre XXKem facility formerly was occupied by companies which performed waste solvent and waste oil fuel blending operations. The XXKem Site is divided by a fence line which separates the front (east) portion (approximately 6 acres) from the central portion, which contains a closed lagoon. The Stickney Site is hydrogeologically down-gradient of the XXKem Site. Between 1959 and 1969, Borden Chemical Printing Ink of Whitehouse, Ohio, disposed of wastes, presumably related to the manufacturing of inks, at the XXKem Site. Incorporated Crafts, Inc., operated on the XXKem Site between 1974 and 1981, using the lagoon for the disposal of liquid wastes from various industrial processes. Under a 1981 consent decree with the State of Ohio, Incorporated Crafts was ordered to close the lagoon. Under the terms of the decree, liquid wastes were to be removed from the lagoon and transported off site for treatment/disposal. The decree also provided for backfilling the lagoon with non-metallic auto demolition material, capping with clay and topsoil, and seeding. Closure was completed in 1983. However, an Expanded Site Inspection (ESI) conducted in 1994 and a Supplemental ESI performed in 1995 (both of which were conducted by the Ohio Environmental Protection Agency (OEPA) under a Cooperative Agreement with U.S. EPA) indicated that significant subsurface soil contamination remained in the former lagoon area, contamination that had migrated to the groundwater at the XXKem Site and the adjacent Stickney Site, posing a potential threat to the Ottawa River.

In May 1994, U.S. EPA signed an Administrative Order on Consent with a group of six PRPs for the Stickney and Tyler Sites for the performance of an Engineering Evaluation/Cost Analysis (EE/CA) at the Stickney and Tyler Sites. During the EE/CA investigation for the Stickney Site, it became apparent that it would be necessary to cap a portion of the adjacent XXKem Site in order to tie the Stickney cap into native soils (fill at XXKem and Stickney were contiguous). The Final EE/CAs were approved on September 14, 1995, and included separate Streamlined Risk Evaluations (SREs) for the Stickney and Tyler Sites. On January 22, 1996, based on the results of the SREs and the analysis set forth in the EE/CAs, U.S. EPA issued separate Enforcement Action Memoranda (EAM), selecting non time-critical removal actions for the Stickney and Tyler Sites. The Stickney EAM also contained a response action decision for the former lagoon at the XXKem Site. Subsequent investigations of the sludge at the bottom of the disposal lagoon at XXKem and the groundwater impacted by that sludge provided evidence that sludge at the bottom of the closed lagoon contained significant levels of organic pollutants, PCBs, and inorganic pollutants, and that these pollutants were migrating via the groundwater to the Stickney Site and becoming commingled with contaminants in the latter. This led U.S. EPA to issue an action memorandum for the XXKem Site in January 1998 (''XXKem Action Memorandum''). The XXKem Action Memorandum called for the construction of a leachate extraction system near the XXKem/Stickney boundary, the purpose being to stop the migration of XXKem pollutants to the groundwater under the Stickney Site. This Action Memorandum was subsequently implemented through Administrative Orders by Consent negotiated with the City of Toledo and SafetyKleen.

Subsequently, U.S. EPA entered into an administrative consent order with a group of PRPs collectively known as the Stickney/Tyler Administrative Group (''STAG''), which consisted of the original six PRPs who had performed the EE/CA and numerous additional parties. In order to come to agreement with U.S. EPA, STAG conducted a private allocation process, which was presided over by a third-party neutral. Although U.S. EPA was not a party to the allocation process, the Agency subsequently received a copy of the allocator's report and reviewed the rationales set forth in the report. The Administrative Order by Consent (AOC) with STAG was signed by U.S. EPA on February 27, 1998. This AOC required STAG to install landfill caps at the Stickney and Tyler Sites, as required by the Enforcement Action Memoranda for these two Sites.

Cost Recovery Settlements

Based in part on the allocation process completed by STAG, U.S. EPA has determined that the settlements identified above are appropriate to resolve any cost recovery claims of U.S. EPA in connection with the Stickney and Tyler Sites. The settlements proposed in this Notice are with parties who did not join the administrative consent order between U.S. EPA and STAG to perform the response actions at these sites. Specifically, after the administrative consent order with STAG, U.S. EPA identified ten non-settling PRPs who, based on the allocation, had significant liability for the Agency's response costs; U.S. EPA subsequently negotiated cost recovery agreements with nine of these entities, who are identified above (the only remaining PRP is First Medical Group). The agreement reached with the PRPs other than SafetyKleen was based on the allocation of responsibility prepared by the third-party neutral for STAG, as well as information provided during settlement negotiations regarding the level of responsibility attributable to each PRP.

The agreement with SafetyKleen was based on that company's responsibility for its predecessor's disposal activities at the XXKem Site. SafetyKleen's predecessor-in-interest, Inland Chemical Company, was responsible for the disposal of toxic chemicals at the central portion of the XXKem Site, which was capped by STAG as part of the Stickney action. The capped area at XXKem consists of approximately 5.5 acres, while the total capped area covering the Stickney and XXKem Sites is equal to approximately 50 acres. Therefore, the capped area at XXKem represents 11 percent (11%) of the total capped area covering the Stickney and XXKem Sites. This percentage was applied to the United States' unrecovered past costs for the Stickney Site. The resulting calculation of the costs associated with the investigation and capping of the XXKem portion were $53,232. U.S. EPA applied a 15 percent premium to this amount because SafetyKleen had not joined STAG in implementing the remedy for the Stickney Site; this premium yielded $61,217, which was rounded down to $60,000 for purposes of settlement.

U.S. EPA has determined that the cost recovery agreements negotiated with these nine entities are appropriate. In addition, the United States Department of Justice reviewed these agreements and gave its concurrence on December 9, 2002.

ADDRESSES: The proposed settlement is available for public inspection at the following locations:

Toledo Public Library, Main Branch, Science & Technology Dept., 325 Michigan St., Toledo, OH.

Toledo Public Library, West Toledo Branch, 1320 Sylvania Ave., Toledo, OH.

Toledo Public Library, Point Place Branch, 2744 110th St., Toledo, OH.

Records Center, U.S. EPA, Region 5, 7th Floor, 77 W. Jackson Blvd., Chicago, IL.

Comments should reference the Stickney Avenue Landfill, 3900 Stickney Avenue, City of Toledo, Lucas County, Ohio, and/or the Tyler Street Dump, City of Toledo, Lucas County, Ohio and EPA Docket No. V–W–03–C–723 or V–W–03–C–724, and should be addressed to James Cha, Associate Regional Counsel, 77 West Jackson Blvd., Mail Code C–14J, Chicago, Illinois 60604. Copies of the proposed settlements may be obtained from Deloris Johnson, Paralegal, Office of Regional Counsel, 77 West Jackson Blvd., Mail Code C–14J, Chicago, Illinois 60604, (312) 886–6806.

FOR FURTHER INFORMATION CONTACT: James Cha, Associate Regional Counsel, 77 West Jackson Blvd., Mail Code C–14J, Chicago, Illinois 60604, (312) 886–0813.

Dated: January 24, 2003.

William Muno,

Director, Superfund Division.

[FR Doc. 03–3413 Filed 2–10–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2593]

Petitions for Reconsideration of Action in Rulemaking Proceedings

February 3, 2003.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by February 27, 2003. *See* Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject:

Federal-State Joint Board on Universal Service (CC Docket No. 96–45)

1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms (CC Docket No. 98–171)

Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (CC Docket No. 90–571)

Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Plan Cost Recovery Contribution Factor and Fund Size (CC Docket No. 92–237, NSD File No. L–00–72)

Number Resource Optimization (CC Docket No. 99–200)

Telephone Number Portability (CC Docket No. 95–116)

Truth-in-Billing and Billing Format (CC Docket No. 98–170)

Number of Petitions Filed: 8.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3313 Filed 2–10–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA–03–46]

Freeze on the Filing of TV and DTV ''Maximization'' Applications in Channels 60–69

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces an immediate freeze on the filing of ''maximization'' applications, as defined further, by analog and digital television broadcast stations in the 746–806 MHz spectrum band, currently comprising television channels 60–69. Imposition of an immediate freeze will ensure that new maximization applications are not filed in this band in anticipation of future limitations, thus defeating the administrative purpose of the freeze.

ADDRESSES: 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Policy Division, Media Bureau, Federal Communications Commission, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's Public Notice (''*PN*''), DA 03–46, adopted and released January 24, 2003. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail: *qualexint@aol.com.*

Synopsis of Public Notice

1. Beginning immediately, and until further notice, the Commission will not accept for filing modification applications that would increase a television broadcast station's analog or DTV service area in the 746–806 MHz spectrum band, currently comprising television channels 60–69, in one or more directions beyond the combined area resulting from the station's parameters as defined in the following: (1) The DTV Table of Allotments; (2) Commission authorizations (license and/or construction permit); and (3) applications on file with the Commission prior to release of this Public Notice. Since July 7, 1998, the Commission has not accepted requests for modifications for analog stations on channels 60–69 that would result in an overall increase in the service area of the station. The policy we announce herein does not alter this existing policy. The Commission will continue to process applications on file as of the date this Public Notice is released. The Commission may consider, on a case by case basis and consistent with the public interest, amendments to those applications, for example, to resolve interference with other stations or pending applications or resolve mutual exclusivity with other pending applications.

2. The Commission has reallocated and is in the process of recovering channels 60–69 in order to provide spectrum for use by other services, particularly public safety and other land mobile services, and is in the process of considering other issues relating to DTV service maximization as part of its periodic reviews of the digital television conversion process. Portions of these channels have already been licensed to Guard Band and Public Safety entities. Prohibiting the filing of new maximization applications in this band will protect these newly licensed entities from shifts or expansion in existing broadcast service, and will facilitate the eventual clearing of this spectrum and the auction of the commercial portions of the spectrum. Imposition of an immediate freeze will ensure that new maximization applications are not filed in this band in anticipation of future limitations, thus defeating the administrative purpose of the action herein.

3. Consistent with existing policy, the Bureau will consider, on a case-by-case basis, requests for waiver of this freeze where the modification application: (1) Would permit co-location of transmitter sites in a market in circumstances consistent with the Commission's policy of encouraging co-location to reduce the cost of construction, particularly of DTV facilities, or to achieve more efficient spectrum use; or (2) is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as where zoning restrictions preclude tower construction at a particular site or where unforeseen events, such as extreme weather events or other extraordinary circumstances, require relocation to a new tower site. As with any request for waiver of our rules, a request for waiver of the freeze imposed in this Notice will be granted only upon a showing of good cause and where grant of the waiver will serve the public interest.

4. The decision to impose this freeze is procedural in nature and therefore the freeze is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(A), (d); *Kessler* v. *FCC,* 326 F. 2d 673 (D.C. Cir. 1963). Moreover, there is good cause for the Commission's not using notice and comment procedures in this case, or making the freeze effective 30 days after publication in the **Federal Register**, because to do so would be impractical, unnecessary, and contrary to the public interest because compliance would undercut the purposes of the freeze. *See* 5 U.S.C. 553(b)(B), (d)(3).

5. This action is taken by the Chief, Media Bureau pursuant to authority delegated by § 0.283 of the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–3312 Filed 2–10–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting; Sunshine Act

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10 a.m. on Tuesday, February 11, 2003, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2) and (c)(9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's corporate activities.

The meeting will be held in the Board room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–3742.

Dated: February 7, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldlman,

Executive Secretary.

[FR Doc. 03–3518 Filed 2–7–03; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed revised collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the information collection outlined in 44 CFR Part 61, as it pertains to application for National Flood Insurance Program (NFIP) insurance.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) is authorized by Pub. L. 90–448 (1968) and expanded by Pub. L. 93–234 (1973). The National Flood Insurance Act of 1968 requires that the Federal Emergency Management Agency (FEMA) provide flood insurance at full actuarial rates reflecting the complete flood risk to structures built or

substantially improved on or after the effective date for the initial Flood Insurance Rate Map (FIRM) for the community, or after December 31, 1974, whichever is later, so that the risks associated with buildings in flood-prone areas are borne by those located in such areas and not by the taxpayers at large. In accordance with Pub. L. 93–234, the purchase of flood insurance is mandatory when Federal or federally related financial assistance is being provided for acquisition or construction of buildings located, or to be located, within FEMA-identified special flood hazard areas of communities that are participating in the NFIP.

Collection of Information

Title: National Flood Insurance Program Policy Forms.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0022.

Forms: FEMA Form 81–16, Flood Insurance Application; FEMA Form 81–17, Cancellation/Nullification Request; FEMA Form 81–18, General Change Endorsement; Request for Policy Processing and Renewal Information Letter (RPPRI Letter); FEMA Form 81–25, V-Zone Risk Factor Rating; FEMA Form 81–67, Preferred Risk Application; and the Renewal Premium Notice.

Abstract: In order to provide for the availability of policies for flood insurance, policies are marketed through the facilities of licensed insurance agents or brokers in the various States. Applications from agents or brokers are forwarded to a servicing company designated as fiscal agent by Federal Insurance Administration (FIA). Upon receipt and examination of the application and required premium, the servicing company issues the appropriate Federal flood insurance policy.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Estimated Total Annual Burden Hours:

FEMA NFIP policy form	Number of responses	Per form burden hours	Total burden hours
81–16 Flood Insurance Application	20,000	12 min	4,000 hrs.
81–67 Preferred Risk Application	5,000	15 min	1,000 hrs.
81–17 Cancellation	8,000	7.5 min	1,000 hrs.
81–18 Endorsement	75,000	9 min	11,250 hrs.
RPPRI Letters (to obtain missing information required for the applications, endorsements, and renewals)	Because this format is used to obtain information requested but missing on, and required to process, applications, endorsements and renewals, its burden hours are not counted separately, but are included in burden hour totals for those forms.		
81–25 V-Zone Risk Factor Rating Form	50	6 hours	300 hrs.
Renewal Premium Notice	146,000	3 min	7,300 hrs.
Coastal Construction Manual—CD Version	50	30 min	25 hrs.
Total	254,100	.....	24,875 hrs.

Estimated Cost: The average annual estimated dollar cost to the respondent applying for or renewing an NFIP policy is $55.50. This is the average commission amount paid by the NFIP to the insurance agent who completes the paperwork in conjunction with the applicant and submits it on his/her behalf to the NFIP. The NFIP pays the insurance agent 15 percent of the annual premium paid by the applicant. The average annual premium for flood insurance written through the NFIP is $370.

In addition, flood insurance applicants who opt to submit the V-Zone Risk Factor Rating Form certified by a licensed engineer or architect may incur an additional cost of approximately $720 per insured structure. The V-Zone Risk Factor Rating Form is used by the NFIP to evaluate the building site condition, support system, and general building details to determine if rate discount is warranted. The NFIP offers insurance rate discount from 5 to 40 percent if the design and construction of the building exceeds the NFIP minimum requirements. In the past year, applicants submitting the V-Zone Risk Factor rating Form received an average of 20 percent discount on their annual premium. Based on this average percentage premium discount, property owners were able to recoup the additional cost within a one to two year period.

The total annual cost to all respondents is approximately $9,526,500, which is the sum of $9,490,500 for policy applications and renewals and $36,000 for V-Zone Risk Factor Rating.

The projected Operating Expenses (not including claims and claim adjustment expenses) of the NFIP are estimated at approximately $6,800,000 for fiscal year 2003. This amount includes all administrative expenses such as processing flood applications, endorsements, cancellations, and customer service.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) evaluate the accuracy of the estimated costs to respondents to provide the information to the agency; (d) enhance the quality, utility, and clarity of the information to be collected; and (e) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management

Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Jhun de la Cruz, Senior Underwriter, Federal Insurance and Mitigation Administration at (202) 646–2650 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address *Information.Collections@fema.gov.*

Dated: February 5, 2003.

Edward W. Kernan,

Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–3330 Filed 2–10–03; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2003–N–3]

Prices for Federal Home Loan Bank Services

AGENCY: Federal Housing Finance Board.

ACTION: Notice of prices for Federal Home Loan Bank services.

SUMMARY: The Federal Housing Finance Board (Finance Board) is publishing the prices charged by the Federal Home Loan Banks (Banks) for processing and settlement of items (negotiable order of withdrawal or NOW), demand deposit accounting (DDA), and other services offered to members and other eligible institutions.

EFFECTIVE DATE: February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Scott L. Smith, Associate Director, Office of Supervision (202) 408–2991; or Edwin J. Avila, Financial Analyst, (202) 408–2871; Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act (Bank Act) (12 U.S.C. 1431(e)) authorizes the Banks to: (1) Accept demand deposits from member institutions; (2) be drawees of payment instruments; (3) engage in collection and settlement of payment instruments drawn on or issued by members and other eligible institutions; and (4) have such incidental powers as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)(2)(B)) requires the Banks to make charges for services authorized in that section, which charges are to be determined and regulated by the Finance Board.

Section 975.6(c) of the Finance Board's regulations (12 CFR 975.6(c)) provides for the annual publication in the **Federal Register** of all prices for Bank services. The following fee schedule is for the only Bank that offers item processing services to its members and other qualified financial institutions. Most of the remaining Banks provide other Correspondence Services, which may include securities safekeeping, disbursements, coin and currency, settlement, electronic funds transfer, etc.However, these Banks do not provide services related to processing of items drawn against or deposited into third party accounts held by their members or other qualified financial institutions.

District 1.—Federal Home Loan Bank of Boston (2003 NOW/DDA Services). (Services not provided.)

District 2.—Federal Home Loan Bank of New York (2003 NOW/DDA Services). (Does not provide item processing services for third party accounts.)

District 3.—Federal Home Loan Bank of Pittsburgh (2003 NOW/DDA Services). (Does not provide item processing services for third party accounts.)

District 4.—Federal Home Loan Bank of Atlanta (2003 NOW/DDA Services). (Does not provide item processing services for third party accounts.)

District 5.—Federal Home Loan Bank of Cincinnati (2003 NOW/DDA Services). (Does not provide item processing services for third party accounts.)

District 6.—Federal Home Loan Bank of Indianapolis (2003 NOW/DDA Services).

Fee Schedules Based on One Year Contract

Checking Account Processing

I. Check Services Transaction Charges

Turnaround (daily or cycled)	Monthly volume	Truncated		Complete		Full service image*	
		Per item	Per item	Per item	Per item	Per item	Per statement
0–5,000	$.054	$.0675	$.0875	$.06	$.40	$.02	$.40
5–10,000	.046	.0625	.0855	.06	.40	.02	.40
10–15,000	.045	.0585	.0835	.06	.40	.02	.40
15–25,000	.040	.0515	.0825	.06	.40	.02	.40
25–50,000	.039	.0475	.0805	.06	.40	.02	.40
50–75,000	.035	.0445	.0765	.06	.40	.02	.40
75–100,000	.032	.0415	.0755	.06	.40	.02	.40
100–and up	.030	.0385	.0745	.06	.40	.02	.40

Monthly volume	Image archive limited service*		CD image limited service
	Per item	Per item	Per CD
0–5,000	$.0125	$.0075	$10.00
5–10,000	.0125	.0075	10.00
10–15,000	.0125	.0075	10.00
15–25,000	.0125	.0075	10.00
25–50,000	.0125	.0075	10.00
50–75,000	.0125	.0075	10.00
75–100,000	.0125	.0075	10.00
100–and up	.0125	.0075	10.00

II. Ancillary Service Fees

Service	Cost
Large Dollar Signature Verification	$0.750
Over-the-counters and Microfilm	0.045
Return Items	2.40
Photocopies** and Facsimiles	2.50
Certified Checks	1.00
Invalid Accounts	0.65
Late Returns	0.50
Invalid Returns	0.50
No MICR/OTC	0.50
Settlement Only	[1] $100.00
+Journal Entries	3.00
Encoding Errors	2.75
Fine Sort Numeric Sequence	0.02
High Dollar Return Notification	N/C
Debit Entries	N/C
Credit Entries	N/C
Standard Stmt. Stuffers (up to 2)***	N/C
Statement Stuffing Savings (Non DDA Accounts)	0.20

[1] per month.

Minimum processing fee of $40.00 per month will apply for total NOW services. Also included in the above fees—at *no* additional cost are Federal Reserve fees, incoming courier fees, software changes, disaster recovery, envelope discount and inventory.

*Image Monthly Maintenance Fee of $500.00 for 0–32% of accounts; $300.00 for 33–49% of accounts; and $200.00 for 50%+ will be assessed for Image Statements.

**Photocopy request of 50 or more are charged at an hourly rate of $15.00.

***Each additional (over 2) will be charged at .02 per statement.

ACH Fees	
Tape transmission	$8.50 per tape.
or originations	.045 per item.
NACHA, MPX	Actual Federal Reserve charges.
ACH entries clearing through our R&T number	.25 per item.
Settlement only	65.00 per month.
ACH returns/NOC	2.50 per item.

Collected balances will earn interest at CMS daily-posted rate.

Prices effective April 1, 1993.

Federal Home Loan Bank of Indianapolis

Deposit Services:	
Pre-encoded Items	
City	$0.045 per item.
RCPC	.055 per item.
Other Districts	.09 per item.
Unencoded	.15 per item.
Food Stamp	.14 per item.
Photocopies*	2.50 per copy.
Adjustments on pre-encoded work	2.75 per error.
EZ Clear	.14 per item.
Coupons	8.25 per envelope.
Collections	6.00 per item.
Cash Letter	2.00 per cash letter.
Deposit Adjustments	.30 per adjustment.
Debit Entries	N/C.
Credit Entries	N/C.
Microfilming	N/C.
Mortgage Remittance (Basic Service)	.35.
Settlement only	100.00 per month.
+Journal Entries	3.00 each.
Courier**	
Indianapolis (city)	8.25 per location, per day, per pickup.
Outside Indianapolis	Prices vary per location.

N/C—No Charge.

District 7.—Federal Home Loan Bank of Chicago (2003 NOW/DDA Services.) (Does not provide item processing services for third party accounts.)

District 8.—Federal Home Loan Bank of Des Moines (2003 NOW/DDA Services.) (Does not provide item

processing services for third party accounts.)

District 9.—Federal Home Loan Bank of Dallas (2003 NOW/DDA Services.) (Does not provide item processing services for third party accounts.)

District 10.—Federal Home Loan Bank of Topeka (2003 NOW/DDA Services.) (Does not provide item processing services for third party accounts.)

District 11.—Federal Home Loan Bank of San Francisco (2003 NOW/DDA services.) (Does not provide item processing services for third party accounts.)

District 12.—Federal Home Loan Bank of Seattle (2003 NOW/DDA Services.) (Does not provide item processing services for third party accounts.)

Dated: February 6, 2003.

By the Federal Housing Finance Board.

Stephen M. Cross,

Director, Office of Supervision.

[FR Doc. 03–3399 Filed 2–10–03; 8:45 am]

BILLING CODE 6725–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 10¾% for the quarter ended December 31, 2002. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: February 4, 2003.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 03–3306 Filed 2–10–03; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date: February 26, 2003—9 a.m.–2:30 p.m. February 27, 2003—9 a.m.–1:30 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 705A, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the full Committee will hear updates and status reports from the Department on several topics including an update on HHS Data Council activities and the implementation of the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). There will also be a presentation on the Consolidated Health Informatics Initiative, and an update on activities at the National Center for Health Statistics. In the afternoon there will be a report from the Subcommittee on Populations on selected activities and an update on the NCVHS 2000–2002 report. There will be Subcommittee breakout sessions late in the afternoon of the first day and prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS website (URL below) when available. On the second day the Committee will hear presentations on ethics requirements related to federal advisory group membership and on population health, followed by a discussion of Committee organizational issues. In the afternoon, each of the NCVHS Subcommittees will report on their breakout sessions from the first day and other activities. Finally, the agendas for future NCVHS meetings will be discussed.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Dated: February 3, 2003.

James Scanlon,

Acting Director, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03–3305 Filed 2–10–03; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Alternative Fuel Vehicle Acquisition Reports

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of availability.

Pursuant to 42 United States Code 13218 (b), the Department of Health and Human Services gives notice that the Department's 1999–2001 alternative fuel vehicle compliance reports are available on-line at *http://www.knownet.hhs.gov/log/afvcompliance.htm.* The 2002 reports are being prepared and will be posted to this site.

FOR FURTHER INFORMATION CONTACT: Steve Mahaney at (202) 690–5663, or via e-mail at *steve.mahaney@hhs.gov.*

Dated: January 27, 2003.

Ed Sontag,

Assistant Secretary for Administration and Management.

[FR Doc. 03–3304 Filed 2–10–03; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; Senior Medicare Patrol Projects

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to Senior Medicare Patrol Projects.

DATES: Submit written or electronic comments on the collection of information by April 14, 2003.

ADDRESSES: Submit electronic comments on the collection of information to: *barbara.lewis@aoa.gov.* Submit written comments on the collection of information to Administration on Aging, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Barbara Lewis, Administration on Aging, Center for Wellness and Community-Based Services, Office of Consumer Choice and Protection, Washington, DC 20201.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

This information collection, Senior Medicare Patrol Projects, continues an existing collection, which had been administered by the Office of Inspector General (OIG) to prevent error, fraud and abuse in the Medicare Program. This is now being transferred from the OIG to the Administration on Aging, and administered under Title IV of the Older Americans Act.

Grantees are required by Congress to provide information for use in program monitoring and for GPRA purposes. This information collection reports the number of new trainers trained and other Medicare outreach activities, and the number of dollars recouped for the Medicare Trust Fund.

AoA estimates the burden of this collection of information as follows: a total of 8 hours for each of 51 grantees per year for the two semi-annual reports.

Dated: February 4, 2003.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 03–3326 Filed 2–10–03; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94D–0325]

International Conference on Harmonisation; Revised Guidance on Q3A Impurities in New Drug Substances; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance entitled ''Q3A(R) Impurities in New Drug Substances.'' The revised guidance, which updates a guidance on the same topic published in the **Federal Register** of January 4, 1996 (the 1996 guidance), was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The revised guidance clarifies the 1996 guidance, adds information, and provides consistency with more recently published ICH guidances. The revised guidance is intended to provide guidance to applicants for drug marketing registration on the content and qualification of impurities in new drug substances produced by chemical syntheses and not previously registered in a country, region, or member State.

DATES: The guidance is effective February 11, 2003. Submit written or electronic comments at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER-FAX or 301–827–3844. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Requests and comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORAMTION** section of this document for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Charles P. Hoiberg, Center for Drug Evaluation and Research (HFD–800), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5918.

Regarding the ICH: Janet Showalter, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three

regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labour, and Welfare, and the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada's Health Products and Food Branch, and the European Free Trade Area.

In accordance with FDA's good guidance practices (GGPs) regulation (21 CFR 10.115), this document is now being called a guidance, rather than a guideline.

To facilitate the process of making ICH guidances available to the public, the agency has changed its procedure for publishing ICH guidances. As of April 2000, we no longer include the text of ICH guidances in the **Federal Register**. Instead, we publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance is placed in the docket and can be obtained through regular agency sources (see the **ADDRESSES** section). Draft guidances are left in the original ICH format. The final guidance is reformatted to conform to the GGP style before publication.

In the **Federal Register** of July 20, 2000 (65 FR 45085), FDA published a draft revised tripartite guidance entitled ''Q3A(R) Impurities in New Drug Substances.'' The notice gave interested persons an opportunity to submit comments by September 18, 2000. The draft revised guidance was a revision of ICH guidance on the same topic published in the **Federal Register** of January 4, 1996 (61 FR 372).

After consideration of the comments received and revisions to the guidance by the Quality Expert Working Group of the ICH, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on February 6, 2002.

ICH Q3A(R) provides guidance on the information for drug marketing registration regarding the content and qualification of impurities in new drug substances produced by chemical syntheses and not previously registered within the three regions of the EC, Japan, and the United States. The guidance is not intended to apply to new drug substances used during the clinical research stage of development. The following types of drug substances are not covered in this guidance: Biological/biotechnological, peptide, oligonucleotide, radiopharmaceutical, fermentation products and semisynthetic products derived therefrom, herbal products, and crude products of animal or plant origin.

Impurities in new drug substances are addressed in the guidance from two different perspectives: (1) Chemistry aspects—classification and identification of impurities in specifications, report generation, listing of impurities in specifications, and a brief discussion of analytical procedures; and (2) safety aspects—guidance for qualifying those impurities that were not present, or were present at substantially lower levels, in batches of the new drug substance used in safety and clinical studies.

The ICH Q3A guidance was revised to add information to certain sections and to provide clarification to other sections of the previous guidance. The most important sections that have been revised are:

- The text on reporting, identification, and qualification thresholds.
- The text on listing impurities in specifications to provide a clear distinction between ICH Q3A (listing impurities) and ICH Q6A (setting specifications).
- The deletion of the exception to conventional rounding practice, i.e., the provision recommending no rounding up to 0.1 percent for values between 0.05 and 0.03 percent.
- Attachment 2—an illustration of reporting impurity results for identification and qualification in an application.
- Attachment 3—a decision tree for identification and qualification.
- Additions and revisions to the previous glossary include definitions for the terms ''unspecified impurity,'' ''identification threshold,'' and ''qualification threshold.''
- References to more recently published ICH guidances entitled ''Q3B(R) Impurities in New Drug Products,'' ''Q3C Impurities: Residual Solvents,'' and ''Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances.''

Minor editorial changes were made to improve the clarity and consistency of the document.

This guidance represents the agency's current thinking on impurities in new drug substances. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cder/guidance/index.htm, http://www.fda.gov/cber/publications.htm, or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: February 4, 2003.

Margaret M. Dotzel,

Assistant Commissioner for Policy.

[FR Doc. 03–3352 Filed 2–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0002]

Medical Devices; Export Certificates; FDA Export Reform and Enhancement Act of 1996; Certification Fees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the new fees the agency will assess for issuing export certificates for devices. The FDA Export Reform and Enhancement Act of 1996 (EREA) provides that any person who exports a device may request that FDA certify in writing that the exported device meets certain specified requirements. It further provides that FDA shall issue such a certification within 20 days of the receipt of a request for such certification and that FDA may charge up to $175 for each certification that is issued within

the 20 days. FDA's costs to process the device certificates have increased since the inception of the export certification program for devices. Because of the increase, FDA is raising the fees for device export certificates accordingly. This document explains the costs included in the export certification program for devices. This is the first increase of the device export certificate fee under the EREA since the initial fee was established in 1996.

DATES: The fees described in this document for export certificates for devices will be effective March 1, 2003. Submit written or electronic comments by March 13, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Leila M. Craddock, Office of Compliance, Center for Devices and Radiological Health (HFZ–305), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–827–4555, ext. 110, FAX 301–594–4715.

SUPPLEMENTARY INFORMATION:

I. Background

The EREA became law on April 26, 1996 (Public Law 104–134, amended by Public Law 104–180, August 6, 1996). The principal purpose of this law is to expedite the export of FDA regulated products, both approved and unapproved, through amendments to sections 801(e) and 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(e) and 382). Section 801(e)(4) of the act provides that any person who exports a drug, animal drug, or device may request that FDA certify in writing that the exported drug, animal drug, or device meets the requirements of section 801(e) or 802 of the act, or other applicable requirements of the act. Upon a showing that the product meets the applicable requirements, the law provides that FDA shall issue export certification within 20 days of the receipt of a request for such certification. It also allows FDA to collect fees of up to $175 for each certificate that is issued within the 20-day period. The focus of this notice is on export certificates issued by the Center for Devices and Radiological Health (CDRH).

The original notice on the EREA fees for export certificates was published in the **Federal Register** on November 6, 1996 (61 FR 57445), and became effective October 1, 1996. An updated resource review within CDRH has identified that recoverable costs of the device export certifications have increased since October 1996. Accordingly, the fees have been recalculated so that the aggregate amount of fees collected will meet the aggregate costs to issue device export certificates.

II. Agency Costs and Fees to be Assessed for Export Certificates

The costs of the export certification program for devices have grown since fiscal year 1997 (FY 97), while the export certificate fee has not changed. The increased costs in the export certification program for devices are attributable to two major areas: (1) The volume of requests for certificates and (2) the increase in payroll costs over the past 6 years. These costs account for the major differences between FY 97 and the current year.

The volume of requests for certificates has increased by 100 percent since FY 97. In order to meet this increased volume of requests, the staff size has grown accordingly. In addition, CDRH's average salary has increased by 37 percent during the same time period. Table 1 of this document shows the increase in certificates from FY 97 to FY 02 (the number of certificates for 2002 was estimated):

TABLE 1.—NUMBER OF EXPORT CERTIFICATES FROM FISCAL YEAR 1997 TO FISCAL YEAR 2002

Fiscal Year (FY)	Total Certificates
FY 97	11,140
FY 98	17,107
FY 99	18,954
FY 00	21,292
FY 01	23,737
FY 02	23,000[1]

[1] Estimated.

The estimated costs of the export certification program for devices in FY 03 are: $533,000 for payroll and $267,000 for operating expenses. There are four recoverable cost categories for preparing and issuing export certificates. They are:

1. Direct personnel for research, review, tracking, writing, and assembly;
2. Purchase of equipment and supplies used for tracking, processing, printing, and packaging. Recovery of the cost of the equipment is calculated over its useful life;
3. Billing and collection of fees; and
4. Overhead and administrative support.

As mentioned previously in this document, the agency may charge up to $175 for each certificate. Certificates for some classes of products cost the agency more than $175 to prepare. Subsequent certificates issued for the same product(s) in response to the same request generally cost the agency less than $175. The fee for all subsequent certificates for the same product(s) issued in response to the same request reflects reduced agency costs for preparing those certificates.

The following fees will be assessed starting March 1, 2003, for device export certificates:

TABLE 2.—FEES FOR FIRST AND SUBSEQUENT EXPORT CERTIFICATES

Type of Certificate	Fee (dollars)
First certificate	175
All subsequent certificates issued for the same product(s) in response to the same request.	15

The fee for issuing the first export certificate for a device product is now at the maximum allowable amount. This fee is now consistent with the export certification fees assessed since FY 97 by all other FDA centers who provide export certification. The fees for issuing subsequent certificates continue to differ among the centers, based on varying costs. The agency expects this new fee schedule for device export certificates to remain constant for at least several years. However, if there is an increased cost to the agency in issuing device export certificates, the fee for subsequent certificates for device products may be increased in the future.

III. Request for Comments

Although the EREA does not require that FDA solicit comments on the assessment and collection of fees for export certificates, FDA is inviting comments from interested persons in order to have the benefit of additional views.

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two hard copies of any written comments, except that individuals may submit one hard copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 30, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–3350 Filed 2–10–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: HRSA Competing Training Grant Application, Instructions and Relating Regulations (OMB No. 0915–0060)—Revision

The Health Resources Services Administration uses the information in the application to determine the eligibility of applicants for awards, to calculate the amount of each award and to judge the relative merit of applications. The application contains a basic set of general instructions as well as program-specific instructions which includes the detailed description of the project. The budget is negotiated for all years of the project period based on this application.

The burden estimate is as follows:

Form	Number of respondents	Response per respondent	Total responses	Hours per response	Total burden hours
Progress Report	1,250	1	1,250	56.25	70,313

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 4, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–3298 Filed 2–10–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Scavenger Receptor BI Targeting for the Treatment of Infection, Sepsis and Inflammation

Alexander Bocharov *et al.* (CC)

DHHS Reference No. E–008–03/0 filed 05 Nov 2002

Licensing Contact: Uri Reichman; 301/435–4616; *reichmau@od.nih.gov*

Proinflammatory bacterial cell wall components including lipopolysaccharide (LPS), lipoteichoic acid (LTA) and peptidoglycan (PGN) are major factors determining the development, progression and outcome for a number of infectious diseases. Chaperonin 60 (spn60), another bacterial component, and its human ortholog heat shock protein 60 (hsp60), also play an important role in inflammatory diseases such as arthritis and lupus erythematosus. This invention relates to the discovery that peptides with an amphipathic helical motif block cellular uptake of LPS (lipopolysaccharide) and proinflammatory responses induced by LPS, LTA (lipoteichoic acid), bacterial cpn60 (Chaperonin 60) and human hsp60 (heat shock protein 60) in vitro. These observations suggest that agents with an amphipathic motif targeting SR–BI (scavenger receptor class B type I) could potentially be used to treat sepsis, bacterial and viral infections and inflammatory diseases where LPS, LTA, viral envelope proteins, and/or heat shock proteins contribute to pathogenesis.

4G10, a Monoclonal Antibody Against the Chemokine Receptor CXCR4, Raised Against a Synthetic Peptide of 38 Residues in Length Derived From the N-terminal Sequence of CXCR4

Edward A. Berger and Christopher C. Broder (NIAID)

DHHS Reference No. E–340–2002/0

Licensing Contact: Sally Hu; 301/435–5606; *hus@od.nih.gov*

This invention identifies a monoclonal antibody (4G10) against the chemokine receptor CXCR4 and is a mouse IgG1 antibody. CXCR4 has been identified as a co-receptor mediating entry of HIV–1 into T cells. Subsequently, CXCR4 has been implicated in normal physiological functions, including activation of B cells and B cell progenitors and guiding their migration into the bone marrow (via its ligand SDF–1). CXCR4 also functions in T cell progenitor migration and neural progenitor stem cell activation. Since

4G10 is a monoclonal antibody raised against a synthetic peptide derived from the N-terminus of CXCR4 that may prove useful in the context of the above CXCR4 functions, 4G10 is an excellent reagent for detection and quantitation of CXCR4 by Western blot, immunoprecipitation, ELISA, and flow cytometry. It can also be used to purify CXCR4 by affinity chromatography. With these known characteristics, it would also function in immuno-histochemical assays as well. Thus, this invention is a good research tool and is available for licensing through a Biological Materials License Agreement as no patent application has been filed.

Decreased Side Effects of DRYVAX® Vaccination by Prior Immunization With Highly Attenuated Poxvirus in Immune-Compromised and Competent Hosts

Genoveffa Franchini (NCI)
DHHS Reference No. E–249–02/0 filed 07 Nov 2002
Licensing Contact: Uri Reichman; 301/435–4616; *reichmau@od.nih.gov*

The invention describes new data relating to a vaccine against smallpox. Smallpox was once worldwide in scope; before vaccination was practiced almost everyone eventually contracted the disease. Variole virus is the etiological agent of smallpox. Symptoms of smallpox begin 12–14 days after exposure to the virus and are characterized by the appearance of multiple, eruptive pustules that cover the entire body. The eradication of smallpox was brought about by the use of the vaccinia virus vaccine, known as DRYVAX''. DRYVAX® is a replication competent vaccinia virus distinct from smallpox. Although the vaccine is highly efficacious, it is also associated with significant serious adverse effects. Specifically, DRYVAX® can cause serious side effects in immunocompromised patients, such as AIDS patients. The last natural case of smallpox occurred in 1977. In 1980 the World Health Organization (WHO) declared the global eradication of smallpox and recommended that all countries cease vaccination. The recent events of September 11, 2001, however, brought the issue of smallpox vaccination to the forefront of the national homeland security efforts.

The current invention describes the use of DRYVAX® in conjunction with (modified vaccinia Ankara strain) MVA or NYVAC, an attenuated poxvirus vector obtained from Connaught Technology Corporation (CTC), an Aventis company. Specifically, the inventors demonstrate, with animal studies, that prior immunization with NYVAC or MVA appear to help contain the adverse effects of the DRYVAX® vaccine. The adverse effects were tempered in immune-competent as well as in immune-compromised hosts. The overall concept of the invention is to immunize first with an attenuated poxvirus or an attenuated vaccinia virus and then with DRYVAX® to overcome the side effects of the latter vaccination.

gp64 Pseudotyped Vectors and Uses Thereof

Mukesh Kumar, Joshua Zimmerberg (NICHD)
DHHS Reference No. E–191–01/0 filed 12 Nov 2002
Licensing Contact: Uri Reichman; 301/435–4616; e-mail: *reichmau@od.nih.gov*

This invention relates to a general gene therapy technology which uses an HIV–1 based vector containing a baculovirus gp64 protein. HIV–1 based gene therapy vectors hold great promise due to their ability to deliver genes to non-dividing cells including hematopoietic stem cells. However native HIV only binds to cells with a CD4 receptor, while gene therapy vectors would need to be delivered to a variety of cells. Various different envelope proteins have been tried to replace the native envelope protein of HIV with a new envelope protein whose origin is another enveloped virus (pseudotyping) that has more general binding capabilities. However, to date, no one has been successful for practical purposes, due to either low titers or cytotoxic effects of the expressed proteins. The inventors have developed a family of nontoxic vectors using baculovirus gp64 protein (which binds to a variety of cells) and HIV proteins that efficiently deliver genes of interest to target cells. Furthermore, since gp64 expression in producer cells is not accompanied by cytotoxic side effects, this protein is an ideal candidate for the development of cell lines for constitutive expression of gp64 for the process of construction of the hybrid HIV (packaging cell lines).

Novel Acylthiol Compositions and Methods of Making and Using Them

John K. Inman (NIAID), Atul Goel (NCI), Ettore Appella (NCI), Jim A. Turpin (NCI), and Marco Schito
DHHS Reference No. E–329–00/0 filed 03 Aug 2001
Licensing Contact: Sally Hu; 301/435–5606; *hus@od.nih.gov*

This invention provides a novel family of acylthiols and uses thereof. More specifically, this invention provides effective inhibitors of HIV that selectively target its highly conserved nucleocapsid protein (NCp7) by interacting with metal chelating structures of a zinc finger-containing protein. Because of the mutationally intolerant nature of NCp7, drug resistance is much less likely to occur with compounds attacking this target. In addition, these drugs should inactivate all types and strains of HIV and could also inactivate other retroviruses, since most retroviruses share one or two highly conserved zinc fingers that have the CCHC motif of the HIV NCp7. Finally, this invention could be very useful for the large-scale practical synthesis of HIV inhibitors, because these compounds can be prepared by using inexpensive starting materials and facile reactions. Thus, it opens the possibility that an effective drug treatment for HIV could be made available to much larger populations than is now the case.

This research has been described in Turpin *et al., J. Med. Chem.* 42: 67–86, 1999; Basrur *et al., J. Biol. Chem.* 275: 14890–14897, 2000; Song *et al., Biorganic and Medicinal Chemistry* 10: 1263–1273, 2002; Goel *et al., Biorganic and Medicinal Chemistry Letters* 12: 767–770, 2002; Schito *et al., AIDS Research and Human Retroviruses,* in press.

Dated: February 4, 2003.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–3303 Filed 2–10–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ALTX–4.

Date: February 14, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center, 1143 New Hampshire Avenue, Washington, DC 20037.

Contact Person: Rass M. Shayiq, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–435–2359, *shayiqr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Signaling Pathways Involved in Tumorigenesis.

Date: February 20, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group. Metabolic Pathology Study Section.

Date: February 23–25, 2003.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, Tysons Corner, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Angela Y. Ng, MBA, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892–7804. 301–435–1715, *nga@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Integrated Review Group. Genome Study Section.

Date: February 23–25, 2003.

Time: 7:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda. One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sally Ann Amero, Ph.D., Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC–7890, Bethesda, MD 20892–7890, 301–435–1159, *ameros@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Reproductive Biology Study Section.

Date: February 24–25, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda. One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dennis Leszczynski, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC7892, Bethesda, MD 20892, (301) 435–1044.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel. ZRG1 SSS W 10B:Small Business:Cardiovascular Devices.

Date: February 24–25, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular and Renal Study Section.

Date: February 24–25, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Russell T. Dowell, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS 8 10: Small Business: Bioengineering and Physiology.

Date: February 24–25, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Paul Parakkal, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5122 MSC 7854, Bethesda, MD 20892, 301–435–1176, *parakkap@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS 3 (03).

Date: February 24, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Gopal C. Sharma, DVM, MD PhD, Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *sharmag@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Human Embryology and Development Subcommittee 1.

Date: February 24–25, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Michael Knecht, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Integrated Review Group, Orthopedics and Musculoskeletal Study Section.

Date: February 24–25, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Daniel F. McDonald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 4, Cognition and Perception.

Date: February 24–25, 2003.

Time: 8:30 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Cheri Wiggs, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Physical Biochemistry Study Section.

Date: February 24–25, 2003.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopa Rakhit, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721, *rakhitg@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral and Behavioral Processes 6, Developmental Disabilities and Child Psychopathology.

Date: February 24–25, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Karen Sirocco, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–0676, *siroccok@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Adult Psychopathology and Disorders of Aging.

Date: February 24–25, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, 815 14th Street, NW., Washington, DC 20005.

Contact Person: Jeffrey W. Elias, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913, *eliasj@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Molecular, Cellular and Developmental Neurosciences Integrated Review Group, Molecular, Cellular and Developmental Neurosciences 7.

Date: February 25–26, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Joanne T. Fujii, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, *fujiij@drg.nih.gov*.

Name of Committee: Center for Scientific Special Emphasis Panel, Nursing Research: Child and Family.

Date: February 25–26, 2003.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Tysons Corner, 1960 Chain Bridge Road, McLean, VA 22102.

Contact Person: Karin F. Helmers, PhD., Scientific Review Administrator, Center for Scientific Review/SNEM IRG, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, General Medicine A–1.

Date: February 25–26, 2003.

Time: 8:30 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Harold M. Davidson, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, 301/435–1776, *davidsoh@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN3 (01) Biological Rhythms and Sleep Mechanisms.

Date: February 25, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Richard Marcus, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, *richard.marcus@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biomedical Information and Nanotechnology.

Date: February 25, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Paul Parakkal, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 5122 MSC 7854, Bethesda, MD 20892, 301–435–1176, *parakkap@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS2(02) Nonviral and Viral Vectors for Liver-Mediated Gene Therapy.

Date: February 25, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Prabha L. Atreya, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20872, *atreyap@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS W 50R:PA02–125:Bioengineering Nanotechnology Initiative.

Date: February 25, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Dharam S. Dhindsa DVM, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126 MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–3301 Filed 2–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Novel Vaccinia Virus Vector for the Treatment of Human Cancers

AGENCY: National Institutes of Health, Public Health Services, HHS.

ACTION: None.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. provisional patent application 60/137,126 (DHHS ref. no. E–181–1999/0–US–01) filed May 28, 1999 and entitled, ''Combined growth factor-deleted and thymidine kinase-

deleted vaccinia virus,'' international PCT application PCT/US00/14679 (DHHS ref. no. E–181–1999/0–PCT–02) and entitled, ''Combined growth factor-deleted and thymidine kinase-deleted vaccinia virus,'' and all corresponding foreign patent applications to JENNEREX Pharmaceuticals, of Mill Valley, California. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide. The field of use may be limited to the development of an oncolytic vaccinia virus vector for the treatment of recurrent squamous cell carcinoma of the head and neck (''SCCHN'').

DATES: Only written comments and/or license applications which are received by the National Institutes of Health on or before April 14, 2003, will be considered.

ADDRESSES: Requests for copies of the patent(s)/patent application(s), inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Jonathan V. Dixon, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: 301.435.5559; Facsimile: 301.402.0220; E-mail: *dixonj@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The above-referenced patent(s)/patent application(s) relate to mutant vaccinia virus expression vectors. The vaccinia vector claimed in this application is useful in that it is substantially non-replicating in non-dividing cells. The new vaccinia virus is deleted of both the growth factor gene and the thymidine kinase gene, which provides for its selective replication properties, and may be useful as a vector for cancer gene therapy or vaccination.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: February 4, 2003.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–3302 Filed 2–10–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by March 13, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Patrick Foley, Des Moines, IA, PRT–066739.

The applicant requests a permit to import the sport-hunted trophy of two male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Lee G. Lipscomb, Los Angeles, CA, PRT–066355.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: George C. Hoppert, Jr., Monroe, MI, PRT–066339.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: January 10, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–3400 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by March 13, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive,

Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Olivia Angelloz, Sidney, NE, PRT–067136.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Entertainment Management & International Animal Exchange, Sarasota, FL, PRT–060762.

The applicant request a permit to export 6.6 captive born tigers (*Panther tigris*) to Akiyoshidai Safari Land, Yamaguchi-pref, Japan, for the purpose of enhancement of the survival of the species through conservation education.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: January 24, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–3401 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice To Extend the Public Comment Period for the Draft Recovery Plan for Three of the Five Distinct Population Segments of Bull Trout (*Salvelinus confluentus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, give notice that the comment period announced in the November 29, 2002, (67 FR 74139) Notice of Availability of 25 chapters of the Draft Recovery Plan for Three of the Five Distinct Population Segments of the Bull Trout (*Salvelinus confluentus*) will be extended an additional 30 days until March 29, 2003. Substantial public interest in the draft recovery plan led us to distribute additional copies and to provide additional opportunities for the public to comment on the plan.

Bull trout are char which are native to the Pacific northwest and western Canada. We identified five distinct population segments of bull trout in five States (Idaho, Montana, Nevada, Oregon, and Washington), and listed the fish under the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) by distinct population segments during 1998 and 1999. The final listing resulted in all bull trout in the coterminous United States being listed as threatened. At this time, the draft recovery plan addresses three of the five distinct population segments, the Klamath, Columbia, and St. Mary-Belly Rivers. Draft recovery plan chapters for the remaining distinct population segments will become available for public review in approximately 1 year.

Because bull trout in the coterminous United States are widely distributed within a large area, the recovery plan is organized into multiple chapters. The introductory chapter (Chapter 1) discusses programmatic issues that broadly apply to bull trout in the coterminous United States. This chapter describes our range-wide recovery strategy for bull trout and identifies recovery tasks applicable to bull trout in general. Each following chapter focuses on bull trout in specific areas (*i.e.*, recovery units), and describes habitat conditions, defines recovery objectives and criteria, and identifies specific recovery tasks for a particular recovery unit. We have identified 27 recovery units in the 5 distinct population segments of bull trout. This notice of extension of public comment period concerns the introductory chapter (Chapter 1) and the 24 recovery unit chapters within the 3 distinct population segments mentioned above.

DATES: We will consider comments on the 25 chapters of the draft recovery plan for bull trout received on or before March 29, 2003.

ADDRESSES: The document is available online at *http://pacific.fws.gov/bulltrout*. Copies of the 25 chapters of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following locations: Snake River Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1387 S. Vinnell Way, Suite 368, Boise, Idaho 83709 (phone: 208–378–5243); Montana Field Office, U.S. Fish and Wildlife Service, 100 N. Park, Suite 320, Helena, Montana 59601 (phone: 406–449–5322); Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Blvd., Suite 234, Reno, Nevada 86502 (phone: 775–867–6300); Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 SE. 98th Ave., Suite 100, Portland, Oregon 97266 (phone: 503–231–6179); and Western Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service, 510 Desmond Dr., SE., Suite 102, Lacey, Washington 98503 (phone: 360–753–9440). Requests for copies of the document should be addressed to these offices, as appropriate.

Comments may be submitted electronically to us at the following email address: *FW1SRBOComments@fws.gov*. The subject line must state ''Bull Trout Comments,'' and include the name and address of the person submitting the comments. Written comments may be sent directly to the Supervisor, U.S. Fish and Wildlife Service, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709. Comments may also be submitted by facsimile to 208–378–5262; please state in the subject line ''Bull Trout Comments,'' and include the name and address of the person submitting the comments.

FOR FURTHER INFORMATION CONTACT: Jeri Wood, Fish and Wildlife Biologist, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709 (phone: 208–378–5243).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Act. A species is considered recovered when the species' ecosystem is restored and/or threats to the species are removed so that self-sustaining and self-regulating populations of the species can be supported as persistent members of native biotic communities. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act, requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We, along with other Federal agencies, will also take these comments into account in the course of implementing approved recovery plans. Individual responses to comments will not be provided.

Bull trout are char native to the Pacific northwest and western Canada. We identified five distinct population segments of bull trout in five states, and issued a final rule listing the Columbia River (Idaho, Montana, Oregon, and Washington) and Klamath River (Oregon) population segments of bull trout as threatened species on June 10, 1998 (63 FR 31647). The Jarbidge River population segment (Idaho and Nevada) was listed as threatened on April 8, 1999 (64 FR 17110). The Coastal-Puget Sound (Washington) and St. Mary-Belly River (Montana) population segments were listed as threatened on November 1, 1999 (64 FR 58910), which resulted in all bull trout in the coterminous United States being listed as threatened.

Bull trout have more specific habitat requirements than most other salmonid fish. Habitat components that influence bull trout distribution and abundance include water temperature, cover, channel form and stability, spawning and rearing substrate conditions, and migratory corridors. Bull trout require colder water than most other salmonids for incubation, juvenile rearing, and spawning. All life-history stages of bull trout are associated with complex forms of cover, including large woody debris, undercut banks, boulders, and pools. Alterations in channel form and reductions in channel stability influence bull trout due to habitat degradation and negative effects on early life-history stages. Channel alterations may reduce the abundance and quality of side channels, stream margins, and pools, which are areas bull trout frequently inhabit. Because bull trout have a relatively long incubation and development period within spawning gravel (greater than 200 days), bedload transport in unstable channels may kill young bull trout. Spawning and rearing areas are often associated with cold-water springs, groundwater infiltration, and the coldest streams in a watershed. Bull trout require loose, clean gravel relatively free of fine sediments for spawning and early rearing. Bull trout use migratory corridors to move from spawning and rearing habitats to foraging and overwintering habitats and back. Different habitats provide bull trout with diverse resources, and migratory corridors allow local populations to connect, which may increase the potential for gene flow and support or refounding of populations.

Bull trout distribution, abundance, and habitat quality have declined range wide. These declines are the results of combined effects of habitat degradation and fragmentation; the blockage of migratory corridors; poor water quality; angler harvest and poaching; diversion structures that cause injuries or fatalities; and introduced nonnative species. Specific land and water management activities that have degraded and continue to depress bull trout populations and degrade habitat include dams and other diversion structures, forest management practices, livestock grazing, agriculture, road construction and maintenance, mining, and urban and rural development.

Because the threatened bull trout population segments are widely distributed over a large area, and population segments were subject to listing at different times, we adopted a two-tiered approach to develop the draft recovery plan for bull trout. The first tier addresses broad aspects of bull trout recovery that apply at the level of population segments. The second tier addresses bull trout recovery in smaller areas, such as specific river basin areas or collections of river basins within population segments, termed ''recovery units.'' We relied on two types of teams to assist in developing the draft recovery plan.

To address ''big-picture'' issues, such as identifying an overall recovery strategy, designating recovery units, and providing guidance in developing the recovery plan, we convened a recovery oversight team. Membership on the recovery oversight team consisted of our biologists, a representative from State fish and wildlife resource agencies in each of four northwestern States (Idaho, Montana, Oregon, and Washington), and a representative from the Upper Columbia United Tribes (Confederated Tribes of the Colville Reservation, Coeur d'Alene Tribe, Kalispel Tribe, Kootenai Tribe of Idaho, and Spokane Tribe).

To develop local recovery strategies at the recovery unit level, we enlisted the assistance of recovery unit teams, one for each recovery unit or recovery subunit. Membership on the recovery unit teams consisted of persons with technical expertise in various aspects of bull trout biology within each recovery unit, typically representing Federal and State agencies, Tribes, and industry and interest groups. Major tasks of recovery unit teams include: Defining recovery for recovery units, including recovery unit-specific objectives and recovery criteria; reviewing factors affecting bull trout; estimating recovery costs; and identifying site-specific recovery actions. Members of the recovery oversight team coordinated the recovery unit teams to ensure consistency among recovery units.

The draft bull trout recovery plan that is currently available for public comment differs from many recovery plans in that it is organized into multiple chapters. The introductory chapter (Chapter 1) discusses programmatic issues that broadly apply to bull trout in the coterminous United States. This chapter describes our recovery strategy for bull trout, defines recovery, and identifies recovery tasks applicable to bull trout in general. Each following chapter (Chapters 2 through 28) addresses a specific recovery unit, and describes conditions, defines recovery objectives and criteria, identifies specific recovery tasks, and estimates time and cost required to achieve recovery for a particular recovery unit.

The general goal of all recovery plans is to describe courses of actions necessary for the ultimate delisting of a species. The specific goal of the draft bull trout recovery plan is to ensure the long-term persistence of self-sustaining, complex interacting groups of bull trout distributed across the species' native range in the United States. Recovery of bull trout will require reducing threats to the long-term persistence of populations, maintaining multiple interconnected populations of bull trout across the diverse habitats of their native range, and preserving the diversity of bull trout life-history strategies (*e.g.*, resident or migratory forms, emigration age, spawning frequency, local habitat adaptations). To accomplish this goal throughout the coterminous United States, the draft recovery plan recommends the following four objectives: (1) Maintain current distribution of bull trout within core areas in all recovery units as described in recovery unit chapters and restore distribution where recommended in recovery unit chapters; (2) maintain stable or increasing trends in abundance of bull trout in all recovery units; (3) restore and maintain suitable habitat conditions for all bull trout life history stages and strategies; and (4) conserve genetic diversity and provide opportunity for genetic exchange. These objectives would apply

to bull trout in all recovery units. Additional objectives may be necessary to achieve recovery in some recovery units, which will be identified in the respective recovery unit chapters.

The draft recovery plan provides criteria to assess whether actions have resulted in the recovery of bull trout. The overall recovery criterion for bull trout in the coterminous United States is that all recovery units meet their criteria, as identified in the recovery unit chapters. Criteria specific to each recovery unit are presented in each draft recovery unit chapter. Individual chapters may contain criteria for assessing the status of bull trout and alleviation of threats that are unique to one or several recovery units. However, every draft recovery unit chapter contains criteria to address the following four characteristics: (1) The distribution of bull trout in identified and potential local populations in all core areas within the recovery unit; (2) the estimated abundance of adult bull trout within core areas in the recovery unit, expressed as either a point estimate or a range of individuals; (3) the presence of stable or increasing trends for adult bull trout abundance in the recovery unit; and (4) the restoration of passage at specific barriers identified as inhibiting recovery.

The draft recovery plan identifies specific tasks falling within the following seven categories as necessary to promote recovery: (1) Protect, restore, and maintain suitable habitat conditions for bull trout; (2) prevent and reduce negative effects of nonnative fishes and other nonnative taxa on bull trout; (3) establish fishery management goals and objectives compatible with bull trout recovery, and implement practices to achieve goals; (4) characterize, conserve, and monitor genetic diversity and gene flow among local populations of bull trout; (5) conduct research and monitoring to implement and evaluate bull trout recovery activities, consistent with an adaptive management approach using feedback from implemented, site-specific recovery tasks; (6) use all available conservation programs and regulations to protect and conserve bull trout and bull trout habitats; and (7) assess the implementation of bull trout recovery by recovery units, and revise recovery unit plans based on evaluations.

Public Comments Solicited

We solicit written comments on any aspect of the draft recovery plan described, including the estimated costs associated with the recovery tasks outlined in the implementation schedule in each draft recovery unit chapter. All comments received by the date specified above will be considered in developing a final bull trout recovery plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: January 27, 2003.

Anne Badgley,

Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 03–3307 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On July 5, 2002, a notice was published in the **Federal Register** (volume 67 FR 44873), that an application had been filed with the Fish and Wildlife Service by Charles A. Dorrance for a permit (PRT–058414) to import one polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population, Canada, for personal use.

Notice is hereby given that on January 15, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On July 9, 2002, a notice was published in the **Federal Register** (volume 67 FR 45530), that an application had been filed with the Fish and Wildlife Service by William A. Jardel, Jr., for a permit (PRT–054887) to import one polar bear (*Ursus maritimus*) sport hunted prior to May 31, 2000, from the M'Clintock Channel polar bear population, Canada, for personal use.

Notice is hereby given that on January 15, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

On December 24, 2002, a notice was published in the **Federal Register** (volume 67 FR 78504), that an application had been filed with the Fish and Wildlife Service by Scott B. Vee for a permit (PRT–065351) to import one polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population, Canada, for personal use.

Notice is hereby given that on January 23, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: January 24, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–3394 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Issuance of Permit for Marine Mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: On November 27, 2002, a notice was published in the **Federal Register** (67 FR 70962), that an application had been filed with the Fish and Wildlife Service by David M. McNeil for a permit (PRT–064723) to import one polar bear (*Ursus maritimus*) sport hunted from the

Southern Beaufort Sea polar bear population, Canada, for personal use.

Notice is hereby given that on December 26, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: January 10, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–3398 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Jicarilla Apache Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Jicarilla Apache Liquor Control Ordinance. It repeals and replaces all previous tribal enactments pertaining to the regulation of liquor on the Jicarilla Apache Reservation. The Ordinance regulates the control, possession and sale of liquor on the Jicarilla Apache Tribe trust lands, to be in conformity with the laws of the State of New Mexico, where applicable and necessary. Although the Ordinance was adopted on September 10, 2001, it does not become effective until published in the **Federal Register**, because the failure to comply with the ordinance may result in criminal charges.

EFFECTIVE DATE: This Ordinance is effective on February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Iris Drew, Office of Tribal Services, Branch of Tribal Relations, 1951 Constitution Avenue, NW, MS 320–SIB, Washington, DC 20245; Telephone (202)513–7628.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 71 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Jicarilla Apache Tribe Liquor Control Ordinance, Resolution No. 2001–O–481–09, was duly adopted by the Jicarilla Apache Tribal Council, governing body of the Jicarilla Reservation, on September 10, 2001. The Jicarilla Apache Tribe, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenue to combat alcohol abuse and its debilitating effects among individuals and family members within the Jicarilla Apache Reservation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistance Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution No. 2001–O–481–09, the Jicarilla Apache Liquor Control Ordinance was duly adopted by the Jicarilla Apache Tribal Council, governing body of the Jicarilla Apache Indian Reservation, on September 10, 2001.

Dated: January 31, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

The Jicarilla Apache Liquor Control Ordinance, Resolution No. 2001–O–481–09, reads as follows:

Title 18, Chapter 4. Liquor Licensing

§ 1. Definitions.

As used in this Chapter the following definitions shall apply:

(a) *Commission.* The Jicarilla Apache Alcohol and Gaming Commission.

(b) *Intoxication or Intoxicated.* A state in which a person's mental or physical functions are noticeably impaired as a result of the use of alcohol or drugs.

(c) *Licensed Premises.* The area within a Liquor Establishment in which the Licensee is authorized to sell Liquor.

(d) *Licensee.* Any person who owns a valid, current Tribal Liquor License or his or her valid agent or designee.

(e) *Liquor.* Distilled or rectified spirits, potable alcohol, brandy, whisky, rum, gin, vodka, aromatic bitters, or any similar alcoholic beverage, including blended and fermented beverages, dilutions or mixtures of one or more of the foregoing, containing more than one-half of one percent alcohol, but excluding medicinal bitters. Liquor also includes beer, or any other alcoholic beverage created by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water, and includes porter, beer, ale, and wine, which means alcoholic beverages obtained by the fermentation of natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, which do not contain less than one-half of one percent alcohol by volume.

(f) *Liquor Establishment.* A location licensed by the Jicarilla Apache Alcohol and Gaming Commission to serve or sell liquor, including the grounds and parking lot of such location.

(g) *Liquor Offenses Section.* Title 7, Chapter 2, Section 12 of the Jicarilla Apache Tribal Code.

(h) *Minor.* Any person under the age of twenty-one (21) years.

(i) *Package.* Any unbroken, unopened container or receptacle used for holding liquor.

(j) *Public Place.* Includes streets, plazas, highways, roads, stores, shopping centers and other businesses, government and other public buildings, schools, churches, public meeting halls, buses and bus depots, on the Reservation which are open to and generally used by the public, and the grounds thereof; it also includes parks and playgrounds and other open spaces on the Reservation which are open to and generally used by the public.

(k) *Purchase.* Includes the exchange, barter, traffic, or receipt, with or without consideration, by any means whatsoever, of liquor.

(l) *Sale.* Includes the exchange, barter, traffic, or donation with or without consideration, in addition to the selling, supplying, or distributing, by any means whatsoever, of liquor.

(m) *Tribal Entity.* Any entity owned by the Jicarilla Apache Tribe or Nation.

(n) *Tribal Lands.* All land within the exterior boundaries of the Jicarilla Apache Reservation, all lands held in trust by the United States for the Jicarilla Apache Tribe and all lands held by the Jicarilla Apache Tribe or Nation subject to a restriction against alienation imposed by the United States.

(o) *Tribal Liquor License.* A license granted by the Jicarilla Apache Alcohol and Gaming Commission in accordance with the provisions of this Chapter to distribute liquor at a liquor establishment.

(p) *Tribal Subdivision.* Any political subdivision or department of the Jicarilla Apache Tribe or Nation.

§ 2. Applicability.

This Chapter shall apply to all persons engaging or seeking to engage in the purchase or sale of liquor on tribal lands; provided, however, that nothing in this Chapter shall apply to:

(a) Liquor used for scientific research or for manufacturing products other than liquor;

(b) Liquor used for medical purposes under the direction of a physician or a hospital, or a mental health, health care, or dental clinic;

(c) Liquor contained in preparations not fit for human consumption such as cleaning compounds; and

(d) Liquor for sacramental use under a religion recognized as valid by the

Commission. Denial of recognition of a religion by the Commission shall be subject to immediate review by the Tribal Council.

§ 3. Jicarilla Apache Alcohol and Gaming Commission.

The Commission shall succeed to all the powers any duties of the Jicarilla Apache Gaming Board created by ordinance 94-O–384–3. Two of the members of the Commission shall serve on a part-time basis and one on a full-time basis. Each member shall serve for a term of three years commencing on the date of appointment; provided that the initial Commission appointed after adoption of this ordinance shall consist of a full-time member with a four-year term, one part-time member with a two-year term and one part-time member with a three-year term. The President shall appoint one Commission member to serve as Chairman.

In addition to the restrictions set forth in Title 18, Chapter 5, Section 7(e), no person may serve on the Commission if he or she:

(1) Has within five (5) years been convicted of a liquor-related misdemeanor; or

(2) Has any direct financial interest in, or is a manager of, any liquor establishment. A tribal member will not be disqualified from serving on the Commission on the basis of the Tribe's ownership of a liquor establishment.

In addition to the powers and duties under Title 18, Chapter 5, Section 7(f), the Commission shall be empowered to:

(1) Review applications for a tribal liquor license and either grant a tribal liquor license or deny the application;

(2) Conduct, or cause to be conducted, a background investigation of any person having or seeking to have an ownership interest in, or who is or is seeking to be a manager of, a liquor establishment;

(3) Inspect, on its own initiative or in response to an affidavit based on a reasonable, good faith belief that a violation may have occurred, on its own or in collaboration with the tribal police, alleged violations by licensees of this Chapter;

(4) Conduct, on its own initiative or in response to a complaint, hearings on alleged violations by licensees of this Chapter. The Commission may issue subpoenas and compel any licensee, or his agent or servant, to appear before it and to provide any information or documents it requires. The Commission may order any licensee to take any appropriate action it deems necessary to comply with this Chapter;

(5) Bring, in the name of the Tribe, any civil action in tribal court or in any court of competent jurisdiction of any state or the United States to enforce the provisions of this Chapter or to enjoin or otherwise prevent any violation of this Chapter. The Commission may also refer suspected criminal violations of this Chapter to the appropriate governmental authority for investigation and prosecution;

(6) Adopt an annual operating budget which shall be subject to the approval of the Tribal Council and, in accordance with this budget, employ a staff as it deems necessary to fulfill its responsibilities under this Chapter. The Commission shall submit an annual report of the revenues it receives to the Tribal Council; such revenues shall be used to fund the operations of the Commission;

(7) Promulgate and adopt regulations, subject to approval by the Tribal Council, to assist in the implementation of this Chapter and to govern the purchase and sale of liquor on tribal lands; and

(8) Require payment of reasonable fees associated with licensing a liquor establishment additional to those set forth in this Chapter.

§ 4. Licensing.

(a) General Qualifications for License; Standards for Evaluating A License Application.

(1) *Applicants.* If the applicant for a tribal liquor license is an individual person, the person must be an enrolled member of the Jicarilla Apache Tribe who has not been convicted of a liquor-related misdemeanor within the last five (5) years or a felony, and who is at least twenty-one (21) years of age. If the applicant is a corporation, partnership, or other business entity, majority ownership and control of the entity must be held by the Jicarilla Apache Tribe, tribal entities, tribal subdivisions and enrolled members of the Tribe; and the manager of the proposed licensed premises must be a person who has not been convicted of a liquor-related misdemeanor within the last five (5) years or a felony, and who is at least twenty-one (21) years of age. For purposes of this section, majority ownership and control means the right to 51 percent or more of the profits and losses of the entity and the power to direct the management, policy and operations of the entity. No person may own or control ten percent (10%) or more of an entity holding a Tribal Liquor License if that person has been convicted of a liquor-related misdemeanor within the last five (5) years or a felony, or is less than twenty-one (21) years of age.

(2) *Evaluation of Application.* The Commission shall issue a Tribal liquor license only if the qualifications set forth in this Chapter are satisfied and, in addition, if the Commission concludes within its discretion that issuing the license will serve the best interests of the Reservation community and the regulatory goals of this Chapter. The Commission shall not issue a tribal liquor license if the Commission determines that:

(A) The proposed activity is likely to undermine economic development on the Reservation;

(B) The proposed activity is likely to impose undue burdens on public safety;

(C) The applicant has failed to demonstrate financial capability to meet all obligations of this Chapter, or

(D) The applicant has failed to identify adequate procedures to prevent violations of this Chapter on the proposed licensed premises.

(3) *Factors to be Considered by Commission.* In deciding whether a proposed license will serve the best interests of the Reservation community, the Commission may consider the following factors, among others:

(A) Whether the application is for the operation of a new or an existing Liquor Establishment;

(B) Whether the applicant is in compliance with applicable tribal and federal law;

(C) Whether the applicant has violated any provision of this Chapter, and if so, whether the violation has been remedied;

(D) The location, number and density of liquor establishments on the Reservation;

(E) Whether food is sold at the establishment; and

(F) The health and welfare of the public.

(4) *Public Comments.* Before the issuance of any Tribal liquor license, the Commission shall allow comments from the public at a time and place advertised in a local newspaper of general circulation.

(5) *Location of Licensed Premises.* The Commission shall not grant a Tribal liquor license to any proposed liquor establishment which is located within 400 feet of the property boundary of a church or school. The Commission may designate other areas that are similarly to be protected.

(b) *Specific License Application Requirements.*

In order to apply for a Tribal liquor license, an applicant must:

(1) Submit to the Commission a written application for the license under oath, on a form prescribed by and stating the information required by the

Commission, together with a nonrefundable application fee of five hundred dollars ($500);

(2) Submit to the Commission for its approval floor plans which show the proposed licensed premises for which the license application is submitted;

(3) Submit to the Commission an area map designating the location of the proposed licensed premises; and

(4) Submit such additional information as the Commission may require.

(c) *Fingerprints.*

If required by the Commission, a non-tribal applicant for a Tribal liquor license, if an individual, shall file with the application two complete sets of the applicant's fingerprints taken under the supervision of and certified to by an officer of the tribal police or a state, county or municipal police department. If the applicant is a corporation, it shall, upon request by the Commission, file two complete sets of fingerprints of each principal officer, and of the agent responsible for the operation of the licensed business and the receipt of service. If the applicant is a limited partnership, it shall, upon request by the Commission, submit two complete sets of fingerprints of each general partner, and of the agent responsible for the operation of the licensed business and the receipt of service. If the applicant is a limited liability company or other business entity, it shall, upon request by the Commission, submit fingerprints as required by the Commission. The Commission may issue a temporary license pending resolution of the background clearances, subject to revocation by the Commission at any time, with or without cause.

(d) *Classes of License; Special Restrictions on License.*

The Commission is authorized to establish by regulation various classes of tribal liquor licenses and to specify the activities authorized by each class, including but not limited to licenses for restaurants, bars, package sales, home brewing, and special events. When the Commission grants a tribal liquor license, it may grant such license with any special restrictions, such as restrictions on type of liquor served or hours of operation, as it deems appropriate. The Commission shall explain in writing the reasons for imposing any special restrictions on a license. A licensee may appeal the imposition of any special restrictions to the Tribal Council as provided in Section 10 of this Chapter.

(e) *Commission Action on Application.*

After reviewing the complete application, the Commission shall send the applicant a proposed decision on the application. The applicant shall have twenty (20) working days to respond in writing to the proposed decision, and may request a hearing before the Commission. The Commission may conduct a hearing on any application on its own initiative, with notice to the applicant. Following any hearing on the application and the expiration of the time allowed for a written response to the proposed decision, the Commission shall issue a final written decision. The written decision shall include findings of fact and an explanation of the grounds for the decision.

(f) *Annual Renewal of License.*

Each person or entity holding a tribal liquor license shall apply to renew that license annually on a form provided by the Commission with a nonrefundable renewal fee in an amount set by regulation of the Commission. The Commission may decline to renew a tribal liquor license only for good cause, such as repeated and intentional violation of any of the provisions of this Chapter, or failure to submit in a timely manner the renewal application and the renewal fee. The Commission may renew a tribal liquor license with special restrictions in addition to any imposed on the expired license. Denial of an application to renew a tribal liquor license or the imposition of special restrictions shall be appealable under Section 10 of this Chapter.

(g) *Amendments of Applicable Law.*

All tribal liquor licenses are subject to any amendment of the tribal code or regulations of the Commission which may be adopted or made effective after the license is approved.

§ 5. Transfer or Lease of Tribal Liquor License.

No tribal liquor license shall be transferred or leased other than with approval of the Commission through the procedure set forth in Section 4 of this Chapter.

§ 6. Reporting.

Every licensee shall keep, in current and available form on the licensed premises, records of all purchases, sales, quantities on hand and such other information as the Commission may reasonably require, including but not limited to, copies of audits, tax returns, and any forms that the Commission may require to be filled out. The Commission may require a licensee to provide it with periodic reports, and it may require the production of any book, record, document, invoice, or voucher kept, maintained, received, or issued by any such licensee in connection with his or her business. If a licensee fails or refuses to furnish within a reasonable period of time any reports or information requested by the Commission, the Commission or its designee may enter the premises of such licensee where the records are kept and make such examination as it deems necessary.

A licensee who is convicted of a violation of the Liquor Offenses Section shall, within two (2) working days of such conviction, report the conviction to the Commission. In addition to any other civil assessment imposed under tribal law, there shall be an assessment of $100 for each day a licensee is late in reporting this information to the Commission.

§ 7. Violation of Liquor Offenses Section.

Any violation of the Liquor Offenses Section by a licensee is a violation of this Chapter.

§ 8. Restrictions on Liquor Sales.

(a) *Sales Only by Holders of Tribal Liquor License and Only at Licensed Premises; Exception.*

No sale of liquor shall be made within tribal lands except by persons holding a tribal liquor license and except at licensed premises; provided, however, that nothing in this Chapter shall prohibit social gifts of liquor to someone who would not otherwise be prevented from obtaining liquor under this Chapter or other applicable law. The Commission may issue a special use permit to enrolled tribal members authorizing specific sales of liquor for specific time periods not to exceed one (1) week, on terms to be established by its regulations.

(b) *Hours and Days of Business; Election Days.*

(1) Liquor may be sold, served, or consumed on any licensed premises only during hours authorized by the Commission. The Commission shall set hours of operation for each liquor establishment individually, subject to appeal under Section 10 of this Chapter to the Tribal Council.

(2) Alcoholic beverages shall not be sold, served, or consumed on licensed premises during voting hours on the days of any tribal, state, or federal election.

(3) The Tribal Council may prohibit the purchase, sale, or consumption of liquor during days and hours in addition to those set forth in this Section.

(4) Nothing in this Section 8(b) shall prohibit, or authorize the prohibition of, the consumption at any time of liquor in guest rooms of hotels or by people in

their own homes, or by people who are guests in the home of another.

(c) *Sales to be Made by Adults.*

All sales of liquor pursuant to this Chapter shall be made by persons twenty-one (21) years of age or older.

(d) *Evidence of Age and Identity.*

Evidence of age and identity of a purchaser of liquor must be shown by a current and valid driver's license or a United States passport, which contains the signature, birth date, and picture of the holder of the license or passport, or any other form of identification acceptable to the Commission.

(e) *Demand for Identification.*

Liquor establishments shall have the authority to demand of any person the production of proper evidence of age and identity before making a sale of liquor to such person.

(f) *Right/Duty to Refuse Sale.*

A liquor establishment shall have the authority and duty to refuse to sell liquor to any person who is unable to produce proper evidence of age and identity as prescribed by this Section, any person who the seller believes is already under the influence of liquor, or to anyone else if the seller reasonably believes that the transaction would lead to a violation of this Chapter. The operator of a liquor establishment shall have the authority to require that a person who the operator reasonably believes is already under the influence of liquor vacate the licensed premises.

(g) *Wholesale Liquor Distributors.*

A person holding a valid tribal liquor license may purchase liquor from any wholesale liquor distributor validly licensed in the jurisdiction of its principal place of business. Wholesale liquor distributors are expressly prohibited from selling liquor within tribal lands or for distribution within tribal lands to anyone not holding a tribal liquor license, subject to the exception set forth in Section 8(a) of this Chapter.

(h) *Sales Only to Be Made by Certified Servers; Alcohol Server Training Required for License Renewal.*

All sales of liquor authorized by this Chapter shall be made by persons who have successfully completed a liquor server training program approved by the Commission and are certified as having completed the course by the Commission or the entity that provides the training program. Any licensee seeking renewal of a license shall submit to the Commission, as a condition of license renewal, proof that each server employed by the licensee during the prior licensing year has completed an alcohol server program approved by the Commission.

(i) *Happy Hours.*

The Commission may adopt a policy on happy hours and on pricing schemes where liquor is sold on certain occasions or at certain times for a price that is substantially lower than the price it is sold for at other times. The Commission may at any time request from a liquor establishment a written description of its policies on such happy hours and pricing schemes and either approve or disapprove such policies. Disapproval of such a policy shall be appealable to the Tribal Council under the procedure set forth in Section 10 of this Chapter.

§ 9. Suspension or Revocation of Liquor License; Special Restrictions; Monetary Sanctions.

The Commission is authorized to revoke or suspend a tribal liquor license or to impose special restrictions on a license for a violation or violations of any provision of this Chapter, after the licensee is given at least seven (7) calendar days notice of the proposed action and the opportunity to appear and to be heard before the Commission, either in person or through a representative, and to submit such evidence as the Commission deems relevant to the matter at issue. Such suspensions, revocations, and imposition of special restrictions are appealable to the Tribal Council under Section 10 of this Chapter. In addition to any civil assessment provided by tribal law, the Commission may initiate an action in Tribal Court for the imposition of monetary sanctions against a Licensee for a violation of this Chapter, to compensate the Tribe for economic losses it suffers, directly or indirectly, as a result of the violation.

§ 10. Appeal to Tribal Council.

(a) *Appealable Actions.* Any person or entity who is denied a tribal liquor license, or whose tribal liquor license is suspended or revoked, or whose tribal liquor license has been limited by special restrictions may appeal the adverse action to the Tribal Council within thirty (30) days of final action by the Commission.

(b) *Record on Appeal.* The record on appeal shall consist of the final written decision of the Commission, all evidence presented to or relied on by the Commission, a taped or transcribed record of any hearing, and any other records of the Commission or any other information requested by the Tribal Council.

(c) *Stay Pending Appeal.* Suspension or revocation of a tribal liquor license may be stayed pending an appeal under this Section, at the discretion of the Tribal Council. The Tribal Council may request that the appellant post an appeal bond in an amount set by the Council.

(d) *Decision of Council Final.* All decisions of the Tribal Council on appeals under this section shall be final.

§ 11. Private Right of Action.

Subject to the limitations of Section 12 of this Chapter, any person who suffers personal injury or property damage as a result of a violation of Section 7 or Section 8 of this Chapter shall have a right of action for money damages against the person or entity whose violation of Section 7 or Section 8 of this Chapter caused or contributed to his or her injury.

§ 12. No Waiver of Sovereign Immunity.

Nothing in this Chapter is intended to be or shall be construed as authorizing any waiver of the sovereign immunity of the Jicarilla Apache Tribe or any of its subdivisions or of any business entity owned in whole or in part by the Tribe.

§ 13. Severability.

If any provision of this Ordinance is found to be invalid or unenforceable, all remaining provisions shall be given full force and effect the fullest extent practicable.

[FR Doc. 03–3385 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Seneca Nation of Indians Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Seneca Nation of Indians Liquor Ordinance governing the possession, consumption and sale of liquor on Seneca Nation Territory (Allegany Territory, except for excluded portions of the City of Salamanca, and Cattaraugus and Oil Springs Reservations) as well as the Seneca Nation Alcoholic Beverages Control Act, section 12 of the Ordinance, governing the possession, consumption and sale of liquor on restricted fee land acquired pursuant to the Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. 1774f(c), in conformity with the laws of the State of New York, where applicable and necessary. Although the Ordinance, including section 12, was adopted on November 16, 2002, it does not become effective until published in the **Federal Register**, because the failure

to comply with the Ordinance may result in criminal charges.

EFFECTIVE DATE: This Ordinance, as well as the Alcoholic Beverages Control Act of the Seneca Nation of Indians, is effective on February 11, 2003.

FOR FURTHER INFORMATION CONTACT: Iris Drew, Office of Tribal Services, 1849 C Street, NW., MS 320–SIB, Washington, DC 20240–4001; Telephone (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Seneca Nation of Indians Liquor Ordinance, including its Alcoholic Beverages Control Act (section 12 of the Ordinance), was duly adopted by the Seneca Nation Council, governing body of the Seneca Nation, on November 16, 2002. The Seneca Nation, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenue to combat alcohol abuse and its debilitating effects among individuals and family members within the jurisdiction of the Seneca Nation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that the Seneca Nation Liquor Ordinance, including the Alcoholic Beverages Control Act, was duly adopted by the Seneca Nation Council, governing body of the Seneca Nation of Indians, on November 16, 2002.

Dated: January 31, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

The Seneca Nation of Indians Liquor Ordinance, including its Alcoholic Beverages Control Act, reads as follows:

Seneca Nation of Indians—Use and Distribution of Liquor Ordinance

Section 1.—Authority and Purpose

(1) The authority for this Ordinance and its adoption by the Council of the Seneca Nation of Indians (Nation Council) is found in the Article XIII of the Constitution of the Seneca Nation of Indians of 1848, as amended, and in the Act of August 15, 1953, Public Law 83–277, 18 U.S.C. 1161.

(2) This Ordinance is for the purpose of:

(a) regulating the possession and prohibiting the sale of intoxicating beverages on Seneca Nation Territory; and

(b) regulating the purchase, introduction, possession, sale and consumption of alcoholic liquor on lands placed in restricted fee status for the Seneca Nation of Indians (the Nation) pursuant to the Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. 1774f(c).

Section 2.—Relation to Other Seneca Nation Regulations

Nation Ordinance No. 89–01, duly adopted by the Nation on January 21, 1989, is hereby repealed and replaced. Any and all prior ordinances, resolutions, regulations or other form of control of the Nation, whether written or unwritten, which authorize, prohibit, or deal with the sale of alcohol are hereby repealed and have no further force and effect. No Nation ordinance or regulation shall be applied in a manner inconsistent with the provisions of this Ordinance.

Section 3.—Application of Ordinance to Seneca Nation Territory and Restricted Fee Lands

The Seneca Nation Territory to which this Ordinance applies is the Indian Country within the exterior boundaries of the Territory that is subject to the jurisdiction of the Nation, except for Allegany Territory which is within the City of Salamanca and is not included in the area set aside for Seneca Nation Housing Authority Project 40–9. For the purposes of this Ordinance, these lands shall be referred to as the Seneca Nation Territory. The restricted fee lands to which Section 12 of this Ordinance applies are those lands placed in restricted fee status for the Nation pursuant to the Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. 1774f(c).

Section 4.—Unlawful Sale and Introduction of Intoxicating Beverages Within Seneca Nation Territory

The sale, and introduction for purposes of sale, of intoxicating beverages shall be unlawful within the Seneca Nation Territory.

Section 5.—Unlawful Possession of Intoxicating Beverages Within Seneca Nation Territory

The possession and consumption of intoxicating beverages shall be unlawful on the public lands of the Seneca Nation Territory, including public highways, bridges, Nation property, parking lots, driveways, and grounds surrounding Nation buildings.

Section 6.—Possession by Minors Within Seneca Nation Territory

It shall be unlawful for any person under the age of 21 to possess or consume intoxicating beverages, or for any person to give intoxicating beverages to any person under the age of 21, within the Seneca Nation Territory.

Section 7.—Maintaining Premises Where Intoxicating Beverages are Consumed, Possessed or Served Within Seneca Nation Territory

It shall be unlawful for any person to maintain premises within Seneca Nation Territory where intoxicating beverages are: (1) Consumed, possessed, or served to any person under the age of 21; or (2) consumed, possessed or served in violation of this Ordinance.

Section 8.—Conformity With State Laws and This Ordinance

The possession of intoxicating beverages shall be lawful within the Seneca Nation Territory provided that such possession is not prohibited by this Ordinance and is in conformity with the laws of the State of New York pursuant to 18 U.S.C. 1161.

Section 9.—Violations Within Seneca Nation Territory—Remedies

(a) The Nation may bring an action in the Peacemakers Courts against any person for violation of the provisions of this Ordinance regulating the possession and prohibiting the sale of intoxicating beverages on Seneca Nation Territory. The action shall be initiated by the filing of a written complaint with the court of the tribal prosecutor, sworn to by a person having personal knowledge of the charged violation, or by a Marshall or Seneca Nation law enforcement officer having personal knowledge of the charged violation. The complaint shall set forth the essential facts charging that a named individual has violated this Ordinance. Such action, including any appeal which is taken from the decision of the Peacemakers Court, shall be governed by the Seneca Nation Civil Procedure Rules.

(b) Any person found to have violated any of Sections 4 through 7 of this Ordinance shall pay a fine of:

(1) No more than $5,000 and no less than $0 for a Section 4 violation, plus court costs.

(2) No more than $5,000 and no less than $0 for a Section 5 violation, plus court costs.

(3) No more than $5,000 and no less than $0 for a Section 6 violation, plus court costs.

(4) No more than $5,000 and no less than $0 for a Section 7 violation, plus court costs.

In addition to the penalty described for such a violation, all intoxicating beverages confiscated from any person found to have violated this Ordinance shall be destroyed.

(c) In lieu of imposing a fine pursuant to subsection (b) above, the Peacemakers Court may employ the procedure provided in section 4–102(a), (b) of the Seneca Nation of Indians Civil Procedure Code.

(d) Any person found to have violated this Ordinance who is charged with a second subsequent violation may be referred to any other jurisdiction which the Peacemakers Court determines has concurrent jurisdiction over the charge.

(e) In addition to other remedies, the Peacemakers Court may enjoin any person in violation of this Ordinance.

Section 10.—Enforcement Within Seneca Nation Territory

The Marshals, the Seneca Nation Conservation Officers, and officers of the Seneca Nation Law Enforcement Department are authorized to enforce this Ordinance within the Seneca Nation Territory.

Section 11.—Unlawful Intoxicating Beverages Within Seneca Nation Territory to be Confiscated

The Marshals, the Seneca Nation Conservation Officers, and law enforcement officers shall confiscate and preserve as evidence all intoxicating beverages sold, introduced for purposes of sale, or possessed in violation of this Ordinance within the Seneca Nation Territory.

Section 12.—Lawful Purchase, Introduction, Sale, Possession and Consumption of Liquor on Lands Placed in Restricted Fee Status Pursuant to the Seneca Nation Land Claims Settlement Act of 1990

Pursuant to the inherent sovereignty of the Nation and in the exercise of the Nation powers for the purpose of protecting the welfare, health, peace, morals and safety of Nation members, the Nation adopts the following Seneca Nation Alcoholic Beverages Control Act for the purpose of regulating the purchase, introduction, sale, possession and consumption of liquor on lands placed in restricted fee status pursuant to the Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. 1774f(c).

(1) *Title and Purpose.* This Seneca Nation Alcoholic Beverages Control Act is enacted for the purpose of regulating the purchase, introduction, sale, possession, and consumption of liquor on lands placed in restricted fee status pursuant to the Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. 1774f(c).

(2) *Definitions.* To the extent that definitions are consistent with Nation and federal law, terms used herein shall have the same meaning as defined in New York Consolidated Laws, Chapter 3–B (Alcoholic Beverage Control Law) and in Title 9, Subtitle B, Chapter I of the New York Regulations (Rules of the New York State Liquor Authority).

(a) *Alcohol.* Ethyl alcohol, hydrated oxide of ethyl or spirit of wine from whatever source or by whatever process produced.

(b) *Alcoholic Beverage.* Any liquid suitable for human consumption, which contains one-half of 1 percent or more of alcohol by volume.

(c) *Barter or Bartering.* The trading for any commodity, act or consideration whether or not there is intrinsic value in the item traded.

(d) *Beer.* Includes any fermented beverages of any name or description, manufactured from malt, wholly or in part, or from any substitute therefor.

(e) *Distilled Spirits.* Any alcoholic beverage that is not beer, wine, sparkling wine or alcohol.

(f) *Liquor.* Includes any and all distilled or rectified spirits, brandy, whiskey, rum, gin, cordials or similar distilled alcoholic beverages, including all dilutions and mixtures of one or more of the foregoing.

(g) *Minor.* Any person under 21 years of age.

(h) *Nation Council.* The duly elected governing body of the Seneca Nation of Indians, a federally recognized tribe.

(i) *Nation Enterprise.* For purposes of this Act only, this term shall mean those corporations chartered by the Nation and authorized to conduct Class III gaming and related commercial activities pursuant to the Seneca Nation Land Claims Settlement Act of 1990 and that is licensed by the Nation Council after paying the appropriate fee set forth by the Nation Council by Resolution at not less than two hundred ($200) dollars and not more than five thousand ($5,000) dollars annually.

(j) *Possession or Possessing.* The exercise of proprietorship or control over a thing or over property and includes constructive possession through control without regard to ownership.

(k) *Purchase.* The exchange, barter, traffic, receipt, with or without consideration, in any form.

(l) *Sale.* The exchange, barter, traffic, donation, with or without consideration, in addition to the selling, supplying or distribution by any means, by any person to any person.

(m) *Transport.* The introduction of alcoholic beverage onto the Seneca Nation Territory by any means of conveyance for the purpose of sale, or distribution, to any licensed dealer.

(3) *Scope of Permissible Activity.* It shall be lawful for any Nation Enterprise, as defined by this Act, operating on lands placed in restricted fee status pursuant to the Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. 1774f(c), to purchase liquor from duly licensed New York State wholesalers, to introduce and possess such liquor, and to sell such liquor on-premises to persons over the age of 21. It shall also be lawful for persons over the age of 21 to possess and consume such liquor at any Nation Enterprise facility located on lands placed in restricted fee status pursuant to the Seneca Nation Land Claims Settlement Act of 1990, as set forth in this Act.

(4) *Prohibition.* The purchase, introduction, sale, possession and consumption of liquor on lands placed in restricted fee status pursuant to the Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. 1774f(c), other than by a Nation Enterprise or person authorized pursuant to this Act is prohibited.

(5) *Penalties.* Any person or entity purchasing, introducing, possessing, selling, bartering, or otherwise trafficking in liquor in violation of this Act or any rule or regulation adopted pursuant to this ordinance shall be subject to a fine or forfeiture, as applicable, of not more than five thousand dollars ($5,000) and may be barred from admission to a licensed Nation Enterprise facility or to Nation Territory or restricted fee lands through due process of law. In addition, persons or entities subject to the full jurisdiction of the Nation may be subject to such other appropriate actions as the Nation Council may determine. All contraband merchandise shall be confiscated by the Nation and disposed of as directed by the Nation Council.

(6) *Conformity With State Law.* Nation standards for the purchase, introduction, possession, sale and consumption of liquor on Seneca Nation Territory land pursuant to this Section 12 shall meet or exceed those required by the State of New York, pursuant to 18 U.S.C. 1161, including but not limited to:

(a) *Hours of Sale, Wine, Beer and Mixed Beverages.* A Nation Enterprise may sell or offer for sale wine, beer and mixed beverages at all times authorized.

(b) *Minor.* A minor is any person who has not celebrated his or her 21st birthday.

(c) *Purchase of Alcohol by a Minor.* Purchase of an alcoholic beverage by a minor on the premises of a Nation Enterprise facility is prohibited.

(d) *Sales to Minor.* Sale of an alcoholic beverage to a minor by a Nation Enterprise facility employee is prohibited.

(e) *Consumption of Alcohol by a Minor.* Consumption of an alcoholic beverage by a minor on the premises of a Nation Enterprise facility is prohibited.

(f) *Possession of Alcohol by a Minor.* Possession of an alcoholic beverage by a minor on a Nation Enterprise facility is prohibited unless such minor is in possession of the alcoholic beverage while in the course and scope of his employment and he is an employee of the Nation Enterprise.

(g) *Purchase of Alcohol for a Minor, Furnishing Alcohol to a Minor.* A person commits a violation of this Act if he knowingly purchases an alcoholic beverage for or knowingly gives or makes available an alcoholic beverage to a minor.

(h) *Misrepresentation of Age by a Minor.* A minor is in violation of this Ordinance if he falsely states that he or she is 21 years of age or older or presents any document that indicates he/she is 21 years of age or older to a person engaged in selling or serving alcoholic beverages at a Nation Enterprise facility.

(i) *Employment of Minors.* A Nation Enterprise shall not employ any person less than 18 years of age to sell, prepare, serve, or otherwise handle liquor, or to assist in doing so. A Nation Enterprise may, however, employ a person less than 18 years of age to work in any capacity other than the actual selling, preparing, serving or handling of liquor.

(7) *Prohibition of Sales During Emergencies or Dates and Times Established by the Nation Council.* The Nation Council President, by authority of Nation Council Resolution, may on an emergency basis and for a period of time not to exceed 5 business days, by written order, act, directive or notice, prohibit the sale of liquor at any Nation Enterprise facility until such emergency order can be considered by the Nation Council which may in its discretion, terminate or extend such order for any length of time it deems necessary, or may issue emergency rules, regulations, directions or orders concerning the sale of liquor which will be valid during the stated emergency period. The Nation Council may likewise issue orders prohibiting or limiting the sale of liquor at any Nation Enterprise facility for any period not to exceed 72 consecutive hours.

(8) *Enforcement.* This Act shall be enforced by the Nation Council, or any other Agency vested with such enforcement authority pursuant to Nation Council Resolution.

Section 13.—Sovereign Immunity Preserved

Nothing in this Ordinance is intended nor shall be construed as a waiver of sovereign immunity by the Nation. No officer, manager or employee of a Nation enterprise shall be authorized nor shall attempt to waive the sovereign immunity of the Nation.

Section 14.—Disclaimers

Nothing in this Ordinance shall be construed to authorize or require the criminal trial and punishment of non-Indians by the Nation except to the extent allowed by an applicable present or future act of Congress or any applicable laws.

Section 15.—Regulations

The Nation Council shall have the exclusive authority to adopt and enforce rules and regulations to implement the purchase, introduction, possession, sale, and consumption of liquor on the Seneca Nation Territory and to further the purposes of this Ordinance. Such rules and regulations shall have the force of law upon promulgation by Nation Council Resolution.

Section 16.—Severability

If any clause, part or section of this Ordinance shall be adjudged invalid, such judgment shall not affect or invalidate the remainder of the ordinance but shall be confined in its operation to the clause, part or section directly involved in controversy in which such judgment was rendered.

Section 17.—Effective Date

This Ordinance shall be effective on February 11, 2003.

Section 18.—Duration

The duration of this Ordinance shall be perpetual until repealed or amended by Nation Council Resolution.

[FR Doc. 03–3386 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–230–1020–PB–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0058

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from Federal timber purchasers to allow BLM to determine compliance with timber export restrictions. BLM uses Form 5460–17, Substitution Determination, to collect this information. This information allows BLM to administer export restrictions on BLM timber sales and to determine whether there was a substitution of Federal timber for exported private timber in violation of 43 CFR 5400.0–3(c).

DATES: You must submit your comments to BLM at the address below on or before April 14, 2003.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComments@blm.gov.* Please include ''ATTN: 1004–0058'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Michael J. Haske, WO–230, on (202) 452–7758 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Haske.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper

functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

BLM manages and sells timber located on the revested Oregon and California Railroad and the reconveyed Coos Bay Wagon Grants Lands under the authority of the Act of August 28, 1937 (50 Stat. 875, 43 U.S.C. 1181e). Under the Act of July 31, 1947, as amended (61 Stat. 681, 30 U.S.C. 601 *et seq.*), BLM also manages and sells timber located on other lands under our jurisdiction. The Department of the Interior and Related Agencies Appropriation Acts of 1975 and 1976 contained a requirement for the inclusion of provisions in timber sale contracts that will ensure that unprocessed timber sold from public lands under the jurisdiction of the BLM will not be exported or used by the purchasers as a substitute for timber they export or sell for export. The regulations at 43 CFR 5400, Sales of Forest Products, General, cover these provisions.

Timber purchasers or their affiliates must submit the information listed at 43 CFR 5424.1(a) using Form 5460–17, Substitution Determination. We collect the purchaser's name, timber contract number, processing facility location, total volume of Federal timber purchases on an annual basis, total volume of private timber exported on an annual basis, and method of measuring the volume. The regulation 43 CFR 5424.1(b) requires that the purchasers or affiliates retain a record of Federal timber acquisitions and private timber exports for three years from the date they activity occurred. BLM uses this information to determine if there was a substitution of Federal timber for exported private timber in violation of 43 CFR 5400.0–3(c). We could not protect against export and substitution if we did not collect this information.

Based on BLM's experience administering timber contracts, we estimate the public reporting burden to collect the information is one hour per response. The respondents are Federal timber purchasers who exported private timber within one year preceding the purchase date of Federal timber and/or affiliates of a timber purchaser who exported private timber within one year before the acquisition of Federal timber from the purchaser. The frequency of response is annually. We estimate 25 responses per year and a total annual burden of 25 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 5, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3327 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6310–PF–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0168

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from private landowners. BLM uses Form OR 2812–6, Report and Road Use, to collect this information. This information allows the BLM to determine road use and maintenance fees for logging road right-of-way permits issued under the O&C Logging Road Right-of-Way regulations (43 CFR part 2812).

DATES: You must submit your comments to BLM at the address below on or before April 14, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0168'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact John Styduhar, BLM Oregon State Office, on (503) 952–6454 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Styduhar.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

BLM may authorize private landowners in western Oregon to transport their timber over BLM-controlled roads under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761). The logging road right-of-way permits that BLM issues are subject to the requirements of the O&C Logging Road Right-of-Way regulations (43 CFR part 2812). As a condition of each right-of-way permit, a permittee must provide us with a certified statement containing the amount of timber removed, the lands from which the timber was removed, and the BLM roads used to transport the timber. Permittees must submit this information on a quarterly basis using the Form OR–2812–6, Report of Road Use.

The monies we receive for road use contributes to the recovery of costs incurred in the construction of forest access roads. The fees we collect for road maintenance are reimbursements for services we provide to maintain roads the permittee's use. If we did not require the collection of information included in the Report of Road Use Form, it would not be possible to

determine payment amounts, ledger account status, or monitor a permittee's compliance with the terms and conditions of the permit. The cost for services we provide would not be collected in a timely manner if we reduce the frequency of reporting. This has a direct effect on the ability of BLM to properly maintain its road system, protect the road investment, and provide safe and efficient access to the public lands.

Based on our experience administering the activities described above, we estimate the public reporting burden for the information collected is 1 hour per response. The 400 respondents include individuals, partnerships, and corporations engaged in removing and transporting timber and other forest products. The frequency of response is quarterly. We estimate 1,600 responses per year and a total annual burden of 1,600 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 5, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3328 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–1050–PF–24–1A]

Extension of Approved Information Collection, OMB Control Number 1004–0182

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect certain information from Alaska Natives interested in reindeer grazing activities on public lands BLM administers. BLM uses AK Form 4201–1, Grazing Lease or Permit Application, and AK Form 4132–2, Reindeer Grazing Permit, to collect this information. This information allows BLM to determine assessment of the compatibility of reindeer grazing on public lands with multiple-use objectives (43 CFR part 4300).

DATES: You must submit your comments to BLM at the address below on or before April 14, 2003. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0182'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administrative, Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Larry Field, BLM Northern Field Office, on (907) 474–2343 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Mr. Field.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Act of September 1, 1937 (50 Stat. 900; 25 U.S.C. 500 *et seq.*) authorizes the Secretary of the Interior to manage the reindeer industry in Alaska to maintain a self-sustaining industry for Natives of Alaska. The Act also authorizes the Secretary to issue permits to those Natives for grazing reindeer on public lands. The regulations at 43 CFR part 4300 authorizes Alaska Natives to apply to BLM to permits to graze reindeer and to construct improvements on the land.

BLM requires that applicant use the AK Form 4201–1, Grazing Lease or Permit Application, and the AK Form 4132–2, Reindeer Grazing Permit, to submit the following information:

(a) Name and address;

(b) A legal description of the land applied for;

(c) Whether the applicant is an Alaska Native, citizen of the United States, or a qualified corporation;

(d) Whether the applicant has examined the land and whether there are any improvements on the land, in which case the applicant needs to provide a list of the surface owners;

(e) Whether the applicant has previously used the land;

(f) How many acres of adjoining land, if any, the applicant controls;

(g) Whether the applicant can furnish a statement of financial responsibility;

(h) The types of numbers of livestock the applicant intends to graze on the land;

(i) The number of years that livestock are permitted to graze and a description of the land on which they may graze; and

(j) The Reindeer Grazing Permit requires a permittee to file an annual report on the grazing operations and to agree to observe covenants involving assignments of permits and reindeer crossing permit applications.

We use the information the applicant provides to determine whether the applicant qualifies to receive a reindeer grazing permit or lease and whether permittee or lessee meets the terms and conditions of the granted permit or lease. If we did not collect this information, BLM would not be able to manage the Alaska reindeer grazing activities.

Based on our experience administering the activities described above, we estimate the public reporting burden for the information collected is 1 hour per application and 15 minutes for the annual report. The respondents are Alaska Natives. We estimate 6 responses per year and a total annual burden of 7 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: February 6, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–3329 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–080–5882–PF–SB01; GP3–0047]

Resource Advisory Committee Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting notice for the Salem, Oregon, Bureau of Land Management (BLM) Resource Advisory Committee under section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Salem Oregon BLM Resource Advisory Committee pursuant to section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, Public Law 106–393 (the Act). Topics to be discussed by the Salem BLM Resource Advisory Committee include: reviewing 2003 project applications, developing funding recommendations for 2003 projects, monitoring progress of previously approved projects, and scheduling field reviews of projects.

DATES: The Salem Resource Advisory Committee will meet at the BLM Salem District Office, 1717 Fabry Road, Salem, Oregon 97306, 9 a.m. to 3 p.m., on March 20, July 24, and August 7, 2003. We have also set aside several dates for potential field trips to view progress of existing projects and/or look at new proposed project areas. The dates for the field trips are June 26, July 10, and September 11, 2003.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, five Resource Advisory Committees have been formed for western Oregon BLM districts that contain Oregon & California (O&C) Grant Lands and Coos Bay Wagon Road lands. The Act establishes a six-year payment schedule to local counties in lieu of funds derived from the harvest of timber on Federal lands, which have dropped dramatically over the past 10 years.

The Act creates a new mechanism for local community collaboration with Federal land management activities in the selection of projects to be conducted on Federal lands or that will benefit resources on federal lands using funds under title II of the Act. The BLM Resource Advisory Committees consist of 15 local citizens (plus six alternates) representing a wide array of interests.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Salem BLM Resource Advisory Committee may be obtained from Trish Hogervorst, Salem BLM Public Affairs, 1717 Fabry Rd. SE, Salem, Oregon 97306. (503–375–5657).

Dated: February, 5, 2003.

Denis Williamson,

District Manager.

[FR Doc. 03–3324 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR110–6333–DQ, HAG03–0046]

Notice of Availability of the Kelsey Whisky Landscape Management Plan, Proposed Amendments to the Medford Resource Management Plan, and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Kelsey Whisky Landscape Management Plan (LMP), Proposed Amendments to the Medford Resource Management Plan (RMPA), and Final Environmental Impact Statement (EIS).

SUMMARY: In accordance with section 202 of the National Environmental Policy Act of 1969, a Final EIS has been prepared for the Glendale Resource Area, Kelsey Whisky LMP, and Proposed Amendments to the Medford RMP. The analysis area encompasses approximately 104,000 acres of public land managed by the Glendale Resource Area, Medford District and located in Josephine, Douglas and Curry counties in southwestern Oregon. The Final EIS was completed after extensive collaboration between Bureau staff and interested parties to ensure the proposed management decisions meet agency responsibilities with relation to the resource management issues identified and reflect public input.

DATES: Written comments on the implementation portion of the RMPA/LMP will be accepted for 30 days following the date the notice is published in the **Federal Register**.

Documents referenced in this final EIS may be examined at the Medford District Office during normal working hours. Comments must be received on or before the end of the comment period at the address listed below. Written protests on the Final EIS will be accepted if postmarked within 30 calendar days from the date that a Notice of Availability is published in the **Federal Register** by the Environmental Protection Agency. Instructions for filing protests are included below under Supplemental Information.

No public meetings, open houses or field tours of the project area have been scheduled at this time. If there is sufficient public interest, public meetings will be arranged to discuss the management alternatives and answer questions. At least 15 days public notice will be given for activities where the public is invited to attend. All meetings will be published on the Medford District planning Web site at *http://www.or.blm.gov/Medford/planning/Medplanningdocs.html;* meeting notices can also be found in the Grant's Pass Courier and Umpqua Free Press newspapers.

ADDRESSES: Written protests must be filed at the following address: Director (210), Bureau of Land Management, Attention: Brenda Williams, PO Box 66538, Washington, DC 20035. In addition, you may use the overnight address (FedEx or USPS) as an option for next day delivery: Director (210), Bureau of Land Management, Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036. Although not a requirement, we suggest that you send your protest by certified mail, return receipt requested.

Written comments should be sent to Lynda L. Boody, Field Manager, Glendale Field Office, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon, 97504, (541) 618–2279, or fax to (541) 618–2400, or e-mail to *110mb@or.blm.gov.*

Comments, including names and addresses of those who comment, will be available for public review. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Lynda L. Boody, Field Manager, Glendale Field Office, Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon, 97504, (541) 618–2279.

SUPPLEMENTARY INFORMATION: Single copies of the document are available at

the Medford District Office. Single copies will also be available for inspection during normal working hours at the Oregon State Office, Public Room, 333 SW., 1st Avenue, Portland, Oregon, 97204. The document may also be reviewed on the Medford District planning Web site at *http://www.or.blm.gov/Medford/planning/Medplanningdocs.html.* The public has the opportunity to protest the proposed RMP amendment components, as described in the Final EIS. The BLM planning regulations, 43 CFR 1610.5–2, state that any person who participated in the planning process and has an interest which may be adversely affected, may protest. A protest may only raise those issues that were submitted for the record during the planning process. The BLM will make its decisions after review of protests (if any).

To be considered complete, your protest must contain, at a minimum, the following information:

- Name, mailing address, telephone number and the affected interest of the person filing the protest(s).
- A statement of the issue (or issues) being protested.
- A statement of the part (or parts) of the proposed plan amendment being protested. To the extent possible, reference specific pages, paragraphs and sections of the document.
- A copy of all your documents addressing the issue (or issues) which were discussed with BLM for the record.
- A concise statement explaining why the proposed decision is believed to be incorrect. This is the critical part of your protest. Document all relevant facts, as much as possible, referencing or citing the planning and environmental analysis documents. A protest that merely expresses disagreement with State Director's proposed decisions without any data will not provide us with the benefit of your information and insight. In this case, the Director's review will be based on the existing analysis and supporting data.

Since this plan is a combination of RMP amendments and subordinate implementation or activity plans, the planning protest provision only applies to the proposed amendments and related findings. The subordinate actions, such as forest health treatments and individual timber sales will be subject to applicable administrative review and appeal provisions at later dates. The planning protest process does not provide for consideration of objections to those actions at this time.

The FEIS analyzes three action alternatives and a no-action alternative, each developed with differing emphasis. The alternatives were designed to address, in different ways, the land and resource management issues identified in the early stages of the planning process. The range of management actions includes timber harvest of anywhere from 3.1 to 11.9 million board feet (MMBF), 5,000–6,000 acres of fuel hazard reduction treatments, restoration activities, road decommissioning, water source enhancement projects, and other land management direction. Public participation has occurred throughout the planning process. Public comments were solicited during scoping and through a 90 day comment period for the draft EIS. The comments were analyzed and utilized where applicable to clarify and strengthen the FEIS.

Dated: December 30, 2002.

Mary Smelcer,

Acting District Manager, Medford District Office.

[FR Doc. 03–3372 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Alaska OCS Region

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of availability of the final Environmental Impact Statement (EIS) for the proposed oil and gas lease sales in the Beaufort Sea, Alaska.

SUMMARY: MMS announces the availability of the final EIS prepared by MMS for the proposed OCS lease sales 186 (2003), 195 (2005), and 202 (2007) offshore Beaufort Sea, Alaska.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Anchorage, Alaska 99508–4363, Attention: Mr. Paul Lowry, telephone: (907) 271–6574 or toll free 1–800–764–2627.

SUPPLEMENTARY INFORMATION: This EIS assesses three lease sales in the final 2002–2007, 5-year oil and gas leasing program for the Beaufort Sea OCS planning area. Sale 186 is scheduled for 2003; sale 195 for 2005; and sale 202 for 2007.

Federal Regulations (40 CFR 1502.4) suggest analyzing similar or like proposals in a single EIS. The proposal for each sale is to offer 1,877 whole or partial lease blocks in the Beaufort Sea planning area, covering about 9.8 million acres (3.95 million hectares) for leasing. The proposed sale area is seaward up to 60 miles offshore of the State of Alaska submerged land boundary in the Beaufort Sea. It extends from the Canadian border on the east to near Barrow, Alaska, on the west.

EIS Availability: Persons interested in reviewing the final EIS ''OCS EIS/EA, MMS 2003–01'' (volumes I through IV) can contact the MMS Alaska OCS Region. The documents are available for public inspection between the hours of 8 a.m. and 4 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Resource Center, 949 East 36th Avenue, Room 330, Anchorage, Alaska 99508–4363, telephone: (907) 271–6070, or (907) 271–6621, or toll free at 1–800–764–2627. Requests may also be sent to MMS at *akwebmaster@mms.gov.* You may obtain single copies of the final EIS, or a CD/ROM version, or the Executive Summary from the same address. The Executive Summary (MMS 2003–02) is available in English or Native Inupiaq languages.

You may look at copies of the final EIS in the following libraries:

Alaska Pacific University, Academic Support Center Library, 4101 University Drive, Anchorage, Alaska;

Alaska Resources Library and Information Service, U.S. Department of the Interior, 3150 C Street, Suite 100, Anchorage, Alaska;

Alaska State Library, Government Publications, State Office Building, 333 Willoughby, Juneau, Alaska;

Canadian Joint Secretariat Librarian, Inuvikon Northwest Territories, Canada;

Department of Indian and Northern Affairs, Yellowknife, Northwest Territories, Canada;

Fairbanks North Star Borough, Noel Wien Library, 1215 Cowles Street, Fairbanks, Alaska;

George Francis Memorial Library, Kotzebue, Alaska:

Ilisaavik Library, Shishmaref, Alaska;

Juneau Public Library, 292 Marine Way, Juneau, Alaska;

Kaveolook School Library, Kaktovik, Alaska;

Kegoyah Kozpa Public Library, Nome, Alaska;

North Slope Borough School District, Library/Media Center, Barrow, Alaska;

Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, Alaska;

Tikigaq Library, Point Hope, Alaska;

Tuzzy Consortium Library, Barrow, Alaska;

University of Alaska Anchorage, Consortium Library, 3211 Providence Drive, Anchorage, Alaska;

University of Alaska Fairbanks, Elmer E. Rasmuson Library, Government Documents, 310 Tanana Drive, Fairbanks, Alaska;

University of Alaska Fairbanks, Geophysical Institute, Government Documents, Fairbanks, Alaska;

University of Alaska Fairbanks, Institute of Arctic Biology, 311 Irving Building, Fairbanks, Alaska;

University of Alaska, Southeast, 11120 Glacier Highway, Juneau, Alaska;

U.S. Army Corps of Engineers Library, U.S. Department of Defense, Elmendorf Air Force Base, Anchorage, Alaska;

Valdez Consortium Library, 200 Fairbanks Street, Valdez, Alaska;

Z. J. Loussac Library, 3600 Denali Street, Anchorage, Alaska.

Dated: January 17, 2003.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

Approved:

Dated: January 22, 2003.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 03–3367 Filed 2–10–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association (''DVD CCA'')

Notice is hereby given that, on January 6, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DVD Copy Control Association (''DVD CCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Amusewell Technology Corp., Taipei, TAIWAN; Cheertek Inc., Hsinchu, TAIWAN; Concord Disc Manufacturing Corp., Anaheim, CA; Daesung Eltec Co., Ltd., Seoul, REPUBLIC OF KOREA; Dai Hwa Industrial Co., Ltd., Chungli, TAIWAN; Elegent Technologies Inc., Fremont, CA; Force NO A/S, Oslo, NORWAY; Hertz Engineering Co., Ltd., Tokyo, JAPAN; Hyundai Autonet Co., Ltd., Kyoungki-do, REPUBLIC OF KOREA; Jeong Moon Information Co., Ltd., Kyeongki-do, REPUBLIC OF KOREA; Nakamichi Corporation, Tokyo, JAPAN; Profilo Telra Elektronik San. Ve Tic. A.S., Istanbul, TURKEY; Soft4D Co., Ltd., Seoul, REPUBLIC OF KOREA; Taijin Media Co., Ltd., Seoul, REPUBLIC OF KOREA; and Ulead Systems, Inc., Taipei, TAIWAN have been added as parties to this venture. The following member has changed its name: Singhale Development Limited to Starlight Video Limited, Hong Kong, HONG KONG–CHINA.

Also, Edge Electronics, Inc., Ronkonkoma, NY; Hibino Corporation, Tokyo, JAPAN; and Winbond Electronics Corp., Hsinchu, TAIWAN have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on October 8, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 5, 2002 (67 FR 72428).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–3295 Filed 2–10–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 01–08

Notice is hereby given that, on January 13, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ExxonMobil Research & Engineering Company, on behalf of PERF Project No. 01–08, titled ''Downstream Waste Management Cooperative,'' has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are ExxonMobil Research & Engineering Company, Fairfax, VA; BP Products North America Inc., Naperville, IL; Petrozyme Technologies, Inc., Guelph, Ontario, CANADA; Shell Global Solutions U.S. Inc., Houston, TX; and Aramco Services Company, Houston, TX. The nature and objectives of the research program performed in accordance with PERF Project No. 01–08 are to provide exchange technology and experience in the minimization treatment and disposal of downstream waste. The program will be carried out by compiling, presenting, and exchanging technology, practices, or research related to achieving the objectives.

Membership in this research group remains open, and the participants intend to file additional written notification disclosing all changes in membership or planned activities.

Information about participating in PERF Project No. 01–08 may be obtained by contacting Mr. Steven Smith, ExxonMobil Research & Engineering Company, Fairfax, VA.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–3294 Filed 2–10–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rotorcraft Industry Technology Association

Notice is hereby given that, on January 13, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Rotorcraft Industry Technology Association (''RITA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Ohio State University College of Engineering, Columbus, OH has been added as an Associate Member of RITA. Also, University of California, Los Angeles, CA; Old Dominion University, Norfolk, VA; and Naval Postgraduate School, Monterey, CA have been dropped as Associate Members of RITA; and Rolls Royce Corporation (formerly Allison Engine

Company), Indianapolis, IN has been dropped as a Supporting Member.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RITA intends to file additional written notification disclosing all changes in membership.

On September 28, 1995, RITA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 3, 1996 (61 FR 14817).

The last notification was filed with the Department on September 27, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 6, 2002 (67 FR 67649).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–3293 Filed 2–10–03; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sarnoff Corporation

Notice is hereby given that, on January 8, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Sarnoff Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Sarnoff Corporation, Princeton, NJ; and E. I. du Pont de Nemours & Company, Wilmington, DE. The nature and objectives of the venture are to develop and demonstrate printable organic electronic materials and fabrication technologies for the production of thin film transistors on plastic substrates for use in low-cost displays.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–3297 Filed 2–10–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on January 13, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Wael Badawy (individual member), Calgary, Alberta, CANADA; Barcelona Design, Inc., Newark, CA; Beijing Microelectronics Technology Institute, Fengtai, Beijing, PEOPLE'S REPUBLIC OF CHINA; CNRS–Centre Nationel De Recherche Scientifique, Paris, FRANCE; CPO Technologies Corporation, Sunnyvale, CA; Digeo Interactive LLC, Longmont, CO; Carolyn Hayden (individual member), Ottawa, Ontario, CANADA; Tomislav Ilic (individual member), San Francisco, CA; Jeda Technologies, Los Altos, CA; LSI Design & Integration Corporation (LDIC), San Jose, CA; NEC Electronics Corporation, Nakahara-ku Kawasaki, JAPAN; Vincent Ratford (individual member), San Jose, CA; WIS Technologies, San Jose, CA; and Christopher Wang (individual member), Costa Mesa, CA have been added as parties to this venture.

Also, Antrim Design Systems, Inc., Scotts Valley, CA; Co-Design Automation, Los Altos, CA; Dolphin Integration, Meylan, FRANCE; Embedded Solutions, Ltd., Abingdon, UNITED KINGDOM; Kyoto University-Department of Communications & Computer Engineering, Kyoto, JAPAN; Zainalabedin Navabi (individual member), Boston, MA; NEC Corporation, Nakahara-Ku Kawasaki, JAPAN; Nortel Networks, Nepean, Ontario, CANADA; Semifore Technologies, Irvine, CA; Simplex Solutions, Inc., Sunnyvale, CA; Spiratech Ltd., Radcliffe, UNITED KINGDOM; Spirea AB, Kista, SWEDEN; TransEDA, Eastleigh, UNITED KINGDOM; Prab Varma (individual member), Mountain View, CA; Vector 12 Corporation, Richmond, British Columbia, CANADA; and Verplex Systems, Inc., Milpitas, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on October 9, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 8, 2002 (67 FR 68177).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–3296 Filed 2–10–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Penick Corporation, Inc., Grant Registration to Import Schedule II Substances

I. Background

On April 11, 2000, Penick Corporation, Inc. (Penick) applied to the Drug Enforcement Administration (DEA) for registration under 21 U.S.C. § 958(i) as an importer of coca leaves, raw opium, poppy straw, and poppy straw concentrate (narcotic raw materials or NRMs), all Schedule II controlled substances. On the same day, Penick also applied with DEA for registration as a manufacturer of a number of Schedule II controlled substances, including oxycodone, hydrcodone, morphine, hydromorphone and codeine. Pursuant to 21 CFR 1301.34(a), Mallinckrodt, Inc. (Mallinckrodt), and Normaco of Delaware, Inc. (Normaco), requested a hearing on Penick's application for registration as an importer of raw opium and concentrate of poppy straw (CPS). A hearing was held in Arlington, Virginia, on July 9 through 13 and August 13 through 15, 2001, with Penick, Noramco, Mallinckrodt and the Government participating and represented by counsel. All parties called witnesses to testify and introduced documentary evidence. After the hearing, all parties filed proposed findings of fact, conclusions of law, and argument. Penick, Moramco, and Mallinckrodt filed reply briefs.

On May 29, 2002, the Administrative Law Judge (ALJ) filed her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. The ALJ recommended that Penick's Application be granted. Mallinckrodt and Noramco filed exceptions to the ALJ's recommended decision. Penick filed a response to the exceptions filed by Mallinckrodt and Noramco. After considering all of the evidence and post hearing submissions, the Deputy Administrator adopts the Filings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge in their entirety. They are incorporated into this final order as through they were set forth at length herein. The adoption of the ALJ's opinion is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

II. Preliminary Matters

A. Regulatory Context

Because Penick is applying for both a renewal of its registration and permission to import, this proceeding is a combined adjudication and rulemaking. The rulemaking determines whether Penick may lawfully import into the United States the Schedule II controlled substances raw opium and CPS pursuant to 21 U.S.C. § 952(a). Penick has the burden of proof, and must establish by a preponderance of the evidence that such a rule can be issued. In order to do this, Penick must show by a preponderance of the evidence that the raw opium and CPS that it intends to import are ''necessary'' to provide for medical, scientific or other legitimate purposes.

The adjudication determines whether DEA should grant Penick's application for registration as an importer of the Schedule II controlled substances raw opium and CPS. In accordance with the DEA Statement of Policy and Interpretation on Registration of Importers, 40 FR 43,745 (1975), the Deputy Administrator will not grant Penick's application unless Penick establishes that the requirements of 21 U.S.C. § 958(a) and § 823(a) and 21 CFR 301.34(b)(1)–(7) are met to show that Penick's registration to import is in the public interest. DEA has the discretion to determine the weight assigned to each of the factors that must be considered to determine whether Penick's registration to import will granted. MD Pharmaceutical, Inc. v. DEA, No. 95–1267, 1996 U.S. App. LEXIS 1229 (D.C. Cir. 1996) (unpublished opinion.)

B. The Right to a Hearing

On December 19, 2000, Penick filed various motions requesting *inter alia,* that the objections to their registration be struck and that their application be summarily granted. As the basis for Penick's Motions, Penick asserted that because Organichem, Mallinckrodt, and Normaco are not bulk manufactures of the substances that Penick seeks to import, none of them had standing to object, comment upon, or request a hearing on Penick's application. Penick further asserted that none of the objecting manufactures had prudential standing to comment, object or request a hearing.

After a thorough review of the relevant parts of the Controlled Substances Act (CSA), the implementing regulations and the CSAS's legislative history, the ALJ found that the objecting manufacturers had standing to challenger DEA's action if it granted Penick's application. The ALJ also found that the CSA and its regulation do not expressly grant a right to hearing to importers of NRMs upon the application of another manufacture to import the same substance. She concluded, however, that DEA has the discretionary authority to afford that hearing right and that it has done so in other proceedings as well as the instant matter. On that basis, the ALJ denied the motion to strike. With respect to Penick's motion for an order, the ALJ determined that she has no jurisdiction over Penick's application to import coca leaves or poppy straw, which was not part of the hearing. Accordingly, the ALJ denied the Motion for an Order. The Deputy Administrator adopts the well-reasoned ruling of the ALJ in denying Penick's motions.

C. Designations of Confidentiality

Pursuant to a Protective Order issued by the Administrative Law Judge on April 26, 2001, and a Revised Protective Order issued on May 24, 2002, the parties filed various motions, both before and after the hearing, for the designation of certain testimony and exhibits as ''confidential'' and ''highly confidential.'' Some of the parties objected to the requests for confidentiality filed by other parties. After the hearing, the parties were provided an opportunity to file by motion requests for specifying such confidential material within the transcript. The Deputy Administrator has reviewed the pleadings on this issue, and hereby concurs with the Administrative Law Judge's orders on designations of confidentiality.

D. Motion To Reopen Record

On December 5, 2001, Normaco filed a letter asserting that Penick had changed its position with respect to the standard for registering applicants to import in a letter commenting on another manufacturers's application to import. Noramco moved to reopen the record in order for the ALJ to consider this letter. The ALJ concluded that no useful purpose would be served by considering Pencik's purported change of position, and denied Normaco's request. The Deputy Administrator concurs with the ALJ's decision denying the motion.

III. Final Order

The Deputy Administrator has carefully reviewed the entire record in this matter, as defined above, and hereby issues this final rule and final order prescribed by 21 CFR 1316.67 and 21 CFR 1301.46, based upon the following findings and conclusions.

A. The Rulemaking

As explained above, Penick cannot be registered as an importer of NRMs unless the Deputy Administrator finds that Penick will be allowed to import NRMs pursuant to 21 U.S.C. 952(a)(1). Because Penick is the proponent of such a rule, it must establish by a preponderance of the evidence that such a rule can be issued.

21 U.S.C. 952(a)(1) makes it unlawful to import controlled substances in Schedule I or II except ''such amounts of crude opium, poppy straw, concentrate of poppy straw and coca leaves as the Attorney General finds to be necessary to provide for medical scientific or other legitimate purposes.'' Whether Penick's importation of opium and CPS is ''necessary'' was not highly disputed at the hearing of this matter.

The ALJ found that it is undisputed that Penick seeks to import narcotic raw materials for legitimate uses. She also noted that the actual amounts of NRMs necessary for those uses is made in subsequent proceedings to establish quotas pursuant to 21 U.S.C. 826 and to grant permits to import pursuant to 21 CFR Part 1312, which are not part of this case. Accordingly, the Deputy Administrator adopts the ALJ's ruling and finds that Penick shall be permitted to import raw opium and CPS.

B. The Adjudication

Longstanding Federal policy prohibits the cultivation of the opium poppy in the United States, and also generally prohibits the importation of bulk narcotic alkaloids such as morphine and codeine. The NRMs raw opium and CPS therefore must be imported into the

United States for purposes of extracting morphine and codeine for pharmaceutical use. Following the extraction of these alkaloids, the manufacturers convert them into active pharmaceutical ingredients (APIs), such as oxycodone and hydrocodone. These APIs are then sold to other manufacturers to produce either dosage formulations or other APIs. The formulated drugs are then sold to drug wholesalers or directly to health care entities.

Noramco and Mallinckrodt are the only companies registered with DEA as importers of NRMs and bulk manufacturers of codeine and morphine. Penick has applied with DEA to be registered as an importer of NRMs, so that the company can manufacture its own codeine and morphine. Noramco and Mallinckrodt oppose Penick's application.

Any company that wishes to import NRMs must comply with the ''80–20 rule,'' which requires that 80 percent of the NRMs imported into the United States have their original source as Turkey and India. The remaining 20 percent must come from Yugoslavia, France, Poland, Hungary, or Australia. 21 CFR 1312.13(f).

Pursuant to 21 U.S.C. §§ 958a and 823(a), DEA is required to register Penick as an importer of Schedule I and II substances if the registration is ''consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971.'' In determining the public interest, DEA must consider the factors enumerated at U.S.C. 823(a)(1)–(6) and 21 CFR 1301.34(b)(1)–(7), some of which are identical. Accordingly, the Deputy Administrator will first consider United States obligations under international treaties, then each of the factors delineated in 21 U.S.C. 823(a) and 21 CFR 1301.34(b)(1)–(7), as follows.[1]

1. Treaty Obligations

As the ALJ found, there is no evidence that the importation of NRMs by Penick would be inconsistent with United States obligations under international treaties, conventions or protocols. Under the United Nations Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol (collectively, the Single Convention), the United States is obligated to take all necessary measures to ensure that the international movement of narcotics is limited to legitimate medical and scientific needs. Peter B. Bensinger, former Administrator of DEA, and Chuck Koczwara, Mallinckrodt's Director of Purchasing and Strategic Procurement, both testified that the primary goals of the Single Convention are to limit the manufacture, trade, and consumption of narcotic drugs to legitimate medical and scientific purposes; and ensuring availability of these drugs for medical use. Peter B. Bensinger also testified that any new registrant represents a potential for diversion, and that inasmuch as it is impossible to reduce the risk of diversion to zero, it is in the public interest to limit access to NRMs to a much smaller number of companies than would be appropriate in a free market.

The ALJ found, however, as explained below in consideration of the possibility of diversion of controlled substances, there is no evidence that entry of Penick into the market for importation of NRMs would result in significant diversion or contravene the Single Convention.

2. Maintenance of Effective Controls Against Diversion of Particular Controlled Substances and any Controlled Substance in Schedule I or II Compounded Therefrom Into Other Than Legitimate, Medical, Scientific, Research or Industrial Channels, by Limiting the Importation of and Bulk Manufacture of Such Controlled Substances to a Number of Establishments Which can Produce an Adequate and Uninterrupted Supply of These Substances Under Adequately Competitive Conditions for Legitimate Medical, Scientific Research, and Industrial Purposes

a. Diversion

The ALJ found that there is no evidence that specific activities involving Penick's importation of NRMs would increase diversion of those substances. John McRoberts, Penick's Vice President of Operations, testified extensively about Penick's internal security measures. The DEA Diversion Investigator (DI) who conducted the investigation of Penick's application testified favorably about Penick's security for shipments of NRMs from India and Turkey and Penick's distribution of its products via common carriers. The DI further testified that Penick's security systems and employee screenings met the requirements of DEA regulations. Neither Noramco nor Mallinckrodt adduced evidence that Penick's security arrangements were faulty.

Noramco Vice President Michael Kindergan testified that Penick's use of inefficient technology would increase the likelihood of diversion of opium in India because it would cause an increase in demand and in cultivation and production. Mr. Kindergan stated further that he believes that DEA personnel involved in investigating Penick's application focus on security within the manufacturing plant. Noramco does not claim that diversion from Penick's facility is likely; indeed, the manufacturing plant is probably the ''area of least exposure.'' However, because of the 80/20 rule, any new production of morphine will come from India, and in taking any action DEA should also consider that action's impact on the NRM market and on diversion at the grower level.

As the ALJ noted, however, there is nothing in the Single Convention treaty that would require a government agency to consider the impact on overseas diversion of NRMs. Accordingly, the ALJ found that DEA is not required to consider the impact on diversion in India in assessing Penick's application, a conclusion with which the Deputy Administrator agrees. Moreover, the Deputy Administrator found that even if the registration of Penick were to cause diversion of NRMs overseas, there is nothing in the Single Convention or DEA regulations that would require DEA to limit registration to import NRMs to only two companies, regardless of the adequacy of competition. Accordingly, the Deputy Administrator finds that this factor weighs in favor of Penick.

b. Adequate Competition

The issue of whether there is adequate competition in the NRM processing market was highly disputed. The ALJ conducted a thorough review of the evidence offered by the parties in coming to her conclusions. Under 21 CFR 1301.34(d), the Deputy Administrator is obligated to consider the following factors in determining whether competition is adequate.

(1) The extent of price rigidity in light of changes in raw materials and other costs and conditions of supply and demand.

(2) The extent of service and quality competition among the domestic manufacturers for shares of the domestic market including (i) shifts in market shares and (ii) shifts in individual customers among domestic manufacturers.

(3) The existence of substantial differentials between domestic prices

[1] In this proceeding, Penick, as the applicant, has the burden of proof of showing that the public interest will be served by its registration to import NRMs. 21 CFR §§ 1301.44(c). Noramco and Mallinckrodt, however, have the burden of proving any propositions of fact or law asserted by them in the hearing. Id.; Roxane, 63 FR 55,891 (DEA 1998).

and the higher of prices generally prevailing in foreign markets or the prices at which the applicant for registration to import is committed to undertake to provide such products in the domestic market in conformity with the Act. In determining the existence of substantial differentials hereunder, appropriate consideration should be given to any additional costs imposed on domestic manufactures by the requirement of the Act and such other cost-related and other factors as the Administrator may deem relevant. In no event should an importer's offering prices in the United States be considered if they are lower than those prevailing in the foreign market or markets from which the importer is obtaining his/her supply.

(4) The existence of competitive restraints imposed upon domestic manufacturers by governmental regulations and

(5) Such other factors as may be relevant to the determinations required under this paragraph.

Michael I. Cragg, Ph.D. testified on behalf of Penick. Dr. Cragg concluded that Penick's reentry into the market will result in lower prices and a more reliable supply of narcotic products. Dr. Cragg relied upon theories of competition presented in economics literature to support the proposition that prices fall as the number of competitors increases. Dr. Cragg also testified that based upon the criteria used by the United States Department of Justice, competition in the narcotics industry is limited and Penick's reentry will increase competition. He found that at the critical stage of the production chain, competition is especially inadequate in the market for semi-processed APIs as there are only two importers and producers of semi-processed APIs, Johnson & Johnson and Mallinckrodt. Dr. Cragg explained that this situation creates a competitive bottleneck that affects all levels of the production chain. Despite this level of concentration, there has been no significant entry into the API market in the last decade. Furthermore, no entry has occurred despite the 150 percent increase in the size of the narcotics finished goods market from 1995 to 2000 and an almost five-fold increase in API revenues over that same period.

Dr. Cragg further testified that during this period of static duopoly, the prices of narcotic APIs have risen faster than when there were more competitors. From 1995 to 2000 estimated profits for narcotic APIs grew from $26 million to $246 million—a growth rate of 57 percent annually. Dr. Cragg concluded that these returns arose because revenues were growing faster than costs during the period when the number of importers was limited to only two. With respect to Penick's reentry into the NRM and API markets, Dr. Cragg expected such entry to raise the level of competition in the API market and lead to lower API prices.

Mark A. King, a consultant, testified on behalf of Noramco. He testified that Dr. Cragg's conclusions were incorrect, because they were based largely upon (1) a failure to consider structural factors inherent in the narcotic market as a whole; and (2) inaccurate data for NRM and API prices, and/or (3) selective application of general free market economic theories to one of the world's most highly regulated industries. Mr. King argued, in part, that NRM price increases have consistently outstripped the prices charged for narcotic APIs by Noramco during the period from 1995 to 2000; therefore, the value-added margins of narcotic APIs produced have declined, not increased. Mr. King also testified that Dr. Cragg's analysis was faulty because (1) he relied on Mallinckrodt's list prices in place of actual prices, (2) that U.S. API prices are driven not by industry concentration, but by DEA's policy of prohibiting the domestic cultivation and processing of opium poppies and (3) there is no persuasive evidence that Noramco or Mallinckrodt have been able to exert inordinate power over purchasers of APIs.

Walter H.A. Vandaele, Ph.D. testified on behalf of Mallinckrodt. Dr. Vandaele concluded generally that there is considerable competition between Mallinckrodt and Noramco in the bulk narcotic API market. Dr. Vandaele argued that significant discounting of list price and frequent switching by large customers from one bulk supplier to another evidence a significant degree of competition in the current market. Significant increases in bulk API prices reflect higher marginal costs of supplying increased demand in the face of tight supplies of raw material. Bulk suppliers' partial downstream integration into finished products provides no increase in their ability to price anti-competitively. Dr. Vandaele further argued that Penick's entry as an NRM importer and bulk API supplier would provide an insignificant impact on the level of competition in either the bulk API market or the narcotic finished product market, and no measurable impact on consumer prices.

The Deputy Administrator agrees with the ALJ that Penick has demonstrated that the opiate API market was not operating under ''adequately competitive conditions'' as of the date of the hearing. As the ALJ noted, it is undisputed that prices of APIs increased substantially during the 1990s. With respect to the other factors listed in 21 CFR 1301.34(d), The Deputy Administrator also agrees with the ALJ that the customer switches referenced in the records do not demonstrate strong competition. With respect to the other factors listed, the Deputy Administrator agrees with the ALJ that they are not relevant in this case or the record is not sufficient to warrant a finding. Having found that the market is not adequately competitive, the Deputy Administrator concludes that this factor weights in favor of granting Penick's application, even though Noramco and Mallinckrodt are capable of maintaining an adequate and uninterrupted supply.

3. Compliance with Applicable State and Local Law;

Penick adduced evidence that it was substantially in compliance with state and local law, and Noramco and Mallinckrodt did not produce evidence to the contrary. The Deputy Administrator therefore finds that this factor weighs in favor of granting Penick's application.

4. Promotion of Technical Advances in the Art of Manufacturing these Substances and the Development of new Substances.

The evidence showed that Penick has patented processes to produce oxycodone and narcotic antagonists from morphine or codeine instead of thebaine, and has invented processes to produce hydrocodone and hydromorphone. There was also evidence that Penick has a more efficient process to produce oxycodone from thebaine in that Penick is able to utilize both opium and CPS as the raw materials for producing various opiate APIs. There was further evidence that Penick plans to upgrade its facilities and has committed at least $30 million to the projects.

Noramco adduced evidence, on the other hand, that Penick's proposed technology for producing oxycodone is not as efficient as Noramco's technology, and both Noramco and Mallinckrodt emphasized that Penick's proposed processes have not been tested in commercial production. Noramco also claimed that Penick had not demonstrated the necessary commitment of resources to adequately upgrade its operation.

While there is controversy over the quality of Penick's proposed technology that cannot be resolved by the record in this matter, The Deputy Administrator concludes that Penick's patents and

development of manufacturing processes promote technical advances in the manufacture of controlled substances. Therefore this factor weighs in favor of granting Penick's application.

5. Prior Conviction Record of Applicant under Federal and State Laws Relating to the Manufacture, Distribution, or Dispensing of such Substances;

It is undisputed that neither Penick nor any of its officer, agents, or key employees has been convicted of any Federal or State law relating to the manufacture, distribution, or dispensing of controlled substances. The Deputy Administrator therefore concludes that this factor weighs in favor of granting Penick's application.

6. Past Experience in the Manufacture of Controlled Substances and the Existence in the Establishment of Effective Controls Against Diversion.

The evidence showed that Penick manufactured narcotics from 1947 until sometime in the 1990s. Although Mallinckrodt and Noramco asserted that regulatory requirements have changed since Penick exited the market, they adduced no evidence that Penick would be unable to comply with current or future requirements.

Penick presented evidence of its security systems and procedures, and Noramco and Mallinckrodt acknowledge that there is little likelihood of diversion from Penick's plant. The Deputy Administrator therefore concludes that this factor weighs in favor of granting Penick's application.

7. Such other Factors as may be Relevant to and Consistent with the Public Health and Safety.

The ALJ found three factors relevant to the public health and safety:

a. *Diversion of Opium:* Both Noramco and Mallinckrodt asserted that Penick's importation of NRMs would be likely to result in increased diversion of opium in India. The ALJ found that DEA is not required to consider the impact on diversion in India in assessing Penick's application. She also found that such claims were speculative at best. The Deputy Administrator agrees that this consideration need not be addressed under this factor. The Deputy Administrator also finds, however, that nothing in the Single Treaty or DEA regulations requires DEA to attempt to eliminate diversion by limiting the licensing of NRM importers to two companies, despite the absence of competition.

b. *Waste of Narcotic Raw Materials:* Noramco and Mallinckrodt also asserted that Penick's unproven technology will result in the waste of scarce NRMs. The ALJ found these assertions speculative because Penick could not begin its scaling up of operations until it obtained a registration to manufacture Schedule II controlled substances. The Deputy Administrator agrees with the ALJ that these contentions are too speculative to warrant consideration.

c. *Compliance with Federal Statutes and Regulations:* Although DEA found Penick to have committed numerous record keeping violations in a 1988 investigation, with Penick paying $40,000 to settle a consequent civil action, the DI testified that subsequent DEA regulatory investigations indicated that Penick was substantially in compliance with DEA requirements. With respect to FDA regulations, Penick has not been cited for any deficiencies since a 1993 warning letter. With respect to EPA requirements, the evidence showed that Penick hold the requisite permits and is operating within them and that any remediation issues with the New Jersey Department of Environmental Protection are the responsibility of Bestfoods rather than of Penick.

C. Exceptions

Both Noramco and Mallinckrodt filed exceptions to the Administrative Law Judge's Recommended Ruling, Findings of Fact, Conclusions of Law and Decision. Penick responded to those exceptions. Having considered the record in its entirety, including the parties' exceptions and responses, the Deputy Administrator finds no merit in Noramco and Mallinckrodt's exceptions, all of which concerned matters that were addressed at length at the hearing. The exceptions were extensive and are part of the record. Only some of the exceptions merit further discussion, and they will not be restated at length herein.

In its exceptions, Noramco contends that the ALJ failed to give consideration to the risk of diversion both inside and outside the United States, (2) securing an adequate supply to meet the needs of the medical community and (3) ensuring that the prices consumers pay for pain medication and narcotic APIs are reasonable and not inflated.

With regard to diversion within the United States, Noramco urges consideration of Penick's compliance history. At the hearing, however, the ALJ considered Penick's compliance history and did not find it evidence of the possibility of increased diversion. The DI testified that although a 1988 DEA investigation revealed numerous record keeping violations, requiring Penick to pay $40,000 to settle a civil action, inspections since 1994 have shown Penick to be substantially in compliance with record keeping requirements. In May 1990 the FDA found three deficiencies. Penick promised to correct two of them and to make some corrections to the third. Pursuant to an anonymous compliant that Penick was making narcotics and antibiotics in an unsanitary manner, FDA investigators conducted another inspection in June 1991; the inspectors found no problems. The FDA inspected Penick again in January and February 1993 and raised a number of concerns. A warning letter was issued to Penick in March 1993 alleging various deficiencies in Penick's validation processes and record keeping and a lack of sufficient quality control personnel. Following correspondence between the FDA and Penick, the FDA inspected again in September 1993 and found that Penick has corrected the deficiencies. Penick underwent another FDA inspection in August 1996 and no deficiencies were found. Thus, while Penick has regulatory problems in 1988, it has been substantially in compliance with DEA regulations since 1994. The 1988 violations, and the apparently minor problems with FDA regulatory compliance on a few occasions in the 90s, do not rise to a level that would warrant a denial of Penick's registration based on the possibility of increased diversion.

Noramco also argues that registration of *any* new participants increases the risk of diversion, and that the ALJ correctly determined that Noramco and Mallinckrodt have the means and capacity to produce an adequate and uninterrupted supply of APIs. As these issues were adequately discussed in the ALJ's recommended decision, there is not need for further discussion here.

Noramco also contends that competition is adequate in the active pharmaceutical ingredient market, citing the ALJ's statement that she did expect Penick's entry into the market to have a significant impact on the prices that consumers pay for opiate drugs. Noramco fails to note, however, that despite conclusion, the ALJ also concluded that Penick has demonstrated that the opiate active pharmaceutical ingredient market was not operating under ''adequately competitive conditions.''

Mallinckrodt also filed exceptions to the ALJ's opinion and recommended ruling. In its first exception, Mallinckrodt argues that the ALJ erred in finding that competition was inadequate. The Deputy Administrator finds, however, that all of

Mallinckrodt's arguments in this regard were thoroughly considered by the ALJ at the hearing and in her opinion and recommended ruling. Accordingly, the exception does not warrant consideration.

Mallinckrodt further argues that it is not in the public interest to register Penick when supply is adequate. Mallinckrodt contends that the ALJ failed to take into account the large investments of Noramco and Mallinckrodt, versus the lesser amount of investment by Penick. Mallinckrodt fails to provide a reasonable explanation, however, of how the size of the parties' investments would effect the adequacy of supply.

Mallinckrodt also contends that Penick's technology does not support its registration. It asserts that there is no evidence that Penick has an efficient technology for producing hydrocodone and that Penick's method of making oxycodone is outdated. As the ALJ noted, however, there is clearly some controversy over the quality of Penick's proposed technology, a controversy that the ALJ concluded the record was not sufficient to resolve. The ALJ concluded, however, that Penick's patents and development of processes promote technical advances in the manufacture of controlled substances. Under 21 U.S.C. 823(a)(3), that factor, along with the development of new substances, is all that is to be considered. Accordingly, the Deputy Administrator agrees with the ALJ and concludes that this factor weighs in favor of granting Penick's registration.

Mallinckrodt argues further that the ALJ erred in not considering the impact on diversion in the overseas NRM market. Mallinckrodt contends that in later cases, DEA has taken the position that such issues are relevant. This issue has been fully discussed in the ALJ's recommended decision and hereinabove. Moreover, the Deputy Administrator finds that even if the possibility of increased diversion overseas were taken into account, Noramco and Mallinckrodt's arguments in this regard are too speculative to warrant serious consideration.

Finally, Mallinckrodt argues that at a minimum, the ALJ should have recommended that conditions be placed on Penick's registration. Having reviewed the record in it's entity, the Deputy Administrator concludes that the evidence showed that Penick does not intend to use its registration as a ''shelf registration.'' There is sufficient evidence, and no controverting evidence, that Penick had made concrete plans to upgrade and expand its controlled substance manufacturing facilities once it is clear that Penick will receive requisite DEA registrations.

IV. Conclusion

Based upon the foregoing, the Deputy Administrator finds that it is in the public interest, as defined by 21 U.S.C. 823(a)(1)–(6) and 21 CFR 1301.34(b)(1)–(7), to grant Penick's application to be registered as an importer of NRMs. In light of Penick's long experience in manufacturing bulk pharmaceuticals, including opiates, it is not necessary to grant a conditional application. This decision is effective March 13, 2003.

Dated: January 29, 2003.

John B. Brown, III,

Deputy Administrator.

[FR Doc. 03–3299 Filed 2–10–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OVAW)–1373]

Meeting of the National Advisory Committee on Violence Against Women

AGENCY: Office on Violence Against Women, Office of Justice Programs, Justice.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming public meeting of the National Advisory Committee on Violence Against Women (hereinafter ''the Committee'').

DATES: The meeting will take place on February 20 from 9 a.m.–5 p.m., and on February 21 from 9 a.m.–2:15 p.m.

ADDRESS: The meeting will take place at the Adolphus Hotel, 1321 Commerce Street, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Omar A. Vargas, Special Assistant, The National Advisory Committee on Violence Against Women, 810 Seventh Street, NW, Washington, DC 20531. Telephone: (202) 307–6026. E-mail: *AskNAC@ojp.usdoj.gov* Fax: (202) 307–3911. View the Committee's Web site at: *http://www.ojp.usdoj.gov/vawo/nac/welcome.html*

SUPPLEMENTARY INFORMATION: The Committee is chartered by the Attorney General, and co-chaired by the Attorney General and the Secretary of Health and Human Services (the Secretary), to provide the Attorney General and the Secretary with practical and general policy advice concerning implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related laws, and will assist in the efforts of the Department of Justice and the Department of Health and Human Services to combat violence against women, especially domestic violence, sexual assault, and stalking.

In addition, because violence is increasingly recognized as a public health problem of staggering human cost, the Committee will bring national attention to the problem of violence against women and increase public awareness of the need for prevention and enhanced victim services.

This meeting will primarily focus on organizational and planning aspects of the Committee's work; however there will be an opportunity for public comment on the Committee's role in providing general policy guidance on implementation of the Violence Against Women Act of 1994, the Violence Against Women Act of 2000, and related legislation.

Meeting Format

This meeting will be held according to the following schedule:

1. *Date:* Thursday, February 20, 2003.
Time: 9 a.m.–5 p.m., including breaks.
2. *Date:* Friday, February 21, 2003.
Time: 9 a.m.–11:45 am, sub-committees will convene in sessions not open to the public. 12 p.m.–2:15 p.m., the whole Committee will reconvene in a session open to the public.

The meeting scheduled for February 20, 2003 will begin with presentations from invited speakers representing Violence Against Women Act implementation by the Departments of Justice, and Health and Human Services. After the presentations by invited speakers, Committee members will consider their charge and convene subcommittees. Time will be reserved for comments from the public, beginning at 4:30 p.m. and ending at 5 p.m. See the section below on Reserving Time for Public Comment for information on how to reserve time on the agenda.

The meeting scheduled for February 21, 2003, will consist of review and discussion by the Committee of the charge and reports by the subcommittees regarding the Committee's work-plan and forthcoming recommendations to the Attorney General and the Secretary.

Attending the Meeting

The meeting on February 20, and the afternoon session of the meeting on February 21, will be open to the public. (The Committee will convene in closed sub-committee sessions on the morning of February 21, 2003, pursuant to 41

CFR 102–3.160.) Registrations for the public sessions will be accepted on a space available basis. Members of the public who wish to attend must register at least six (6) days in advance of the meeting by contacting Omar A. Vargas, Special Assistant, at the e-mail address or fax number listed above. Access to the meeting will not be allowed without registration, and all attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Individuals who will need special accommodations for a disability in order to attend the meetings should notify Omar A. Vargas, Special Assistant, at the above e-mail address or by fax, no later than February 14, 2003. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Submitting Written Comments

Interested parties are invited to submit written comments to the Committee, by September 30, 2003, using one of the following methods: by e-mail to *AskNAC@ojp.usdoj.gov;* by fax on (202)–307–3911; or by mail to The National Advisory Committee on Violence Against Women, 810 Seventh Street, NW., Washington, DC 20531. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received (we recommend 3–4 weeks).

Reserving Time for Public Comment

If you are interested in participating during the public comment period of the meeting, on the implementation of the Violence Against Women Act of 1994, and the Violence Against Women Act of 2000, you are requested to reserve time on the agenda by contacting the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice by e-mail or fax. Please include your name, the organization you represent, if appropriate, and a brief description of the issue you would like to present. Participants will be allowed approximately 3 to 5 minutes to present their comments, depending on the number of individuals who reserve time on the agenda. Participants are also encouraged to submit two written copies of their comments at the meeting.

Given the expected number of individuals interested in providing comments at the meetings, reservations for presenting comments should be made as soon as possible. Persons who are unable to obtain reservations to speak during the meetings are encouraged to submit written comments, which will be accepted at each meeting site or may be mailed to the Committee at the address listed under the section on **Submitting Written Comments**.

Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

Diane Stuart,

Director, Office on Violence Against Women.

[FR Doc. 03–3383 Filed 2–10–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11100]

Proposed Class Exemption For Release of Claims and Extensions of Credit in Connection With Litigation

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of a proposed class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986, as amended (the Code). The proposed class exemption would apply to transactions engaged in by a plan in connection with the settlement of litigation. This exemption is being proposed in response to concerns raised by the pension community regarding the impact of ERISA's prohibited transaction provisions on the settlement of litigation by employee benefit plans with parties in interest. The proposed exemption, if granted, would affect all employee benefit plans, the participants and beneficiaries of such plans, and parties in interest with respect to those plans engaging in the described transactions.

DATES: Written comments and requests for a public hearing shall be submitted to the Department before March 28, 2003.

ADDRESSES: All written comments and requests for a public hearing (preferably 3 copies) should be sent to: U. S. Department of Labor, Employee Benefits Security Administration, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Plan Settlement Class Exemption Proposal. Comments may be sent by fax to (202) 219–0204 or by e-mail to *moffittb@pwba.dol.gov*. The application for exemption (Application Number D–11100), as well as all comments received, will be available for public inspection in the Public Documents Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Andrea W. Selvaggio, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Washington DC 20210 (202) 693–8540 (not a toll-free number).

SUPPLEMENTARY INFORMATION: This document contains a notice that the Department is proposing a class exemption from the restrictions of section 406(a)(1)(A), (B) and (D) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (B) and (D) of the Code. The exemption described herein is being proposed by the Department on its own motion pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).[1]

I. General Background

Questions have been raised regarding whether a fiduciary that agrees to settle litigation or threatened litigation by releasing the plan's claims against a party in interest in exchange for consideration has engaged in a prohibited transaction. In this regard, the prohibited transaction provisions of the Act generally prohibit transactions between a plan and a party in interest (including a fiduciary) with respect to such plan. Specifically, section 406(a)(1)(A), (B) and (D) of the Act states that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(A) Sale or exchange, or leasing, of any property between the plan and a party in interest;

(B) Lending of money or other extension of credit between the plan and a party in interest; or

[1] Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996) generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor. For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(D) Transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan.

As noted in the General Information section of the Preamble of this proposed class exemption, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction. Rather, the proposed exemption is being published in response to uncertainty expressed on the part of plan fiduciaries charged with the responsibility under ERISA for determining whether it is in the interests of a plan's participants and beneficiaries to enter into a settlement agreement with a party in interest. The Department believes that this exemption will remove the uncertainty surrounding this issue and allow plan fiduciaries to properly carry out their responsibilities under ERISA.

II. Discussion of the Proposed Exemption

The Department is proposing this class exemption on its own motion in order to facilitate settlement of litigation by plans. Currently, two class exemptions provide limited relief for prohibited transactions that may arise as a result of the remedy proposed by the parties and/or the court in settlement of litigation or potential litigation where the Department or the Internal Revenue Service (the Service) is involved (the remedial transactions). PTE 79–15 [2] exempts certain remedial transactions or activities specifically authorized or required by a judicial order or a judicially approved settlement decree where the Department or the Service is a party to the litigation. PTE 79–15 requires, among other things, that the transaction or activity be approved by the court prior to its occurrence. Similarly, PTE 94–71 [3] exempts certain remedial transactions authorized, prior to the occurrence of such transactions, by the Department. PTE 94–71 is available only to settle issues arising out of a Department of Labor investigation of a plan. No relief is provided for the transactions originally cited as violations by the Department. Under PTE 94–71, relief is conditioned, among other things, on approval by the Department, a written settlement agreement and notice to affected participants and beneficiaries.

PTEs 79–15 and 94–71 recognize that, in some situations, the most appropriate resolution for certain ERISA violations may be a remedy that would otherwise be prohibited. For example, a plan may have purchased property from a party in interest in violation of section 406(a)(1)(A) of the Act. In attempting to resolve this prohibited transaction, the parties may find that another party in interest is the only person willing and able to purchase the property from the plan. However, without an exemption, this remedial transaction would also violate section 406(a)(1)(A) of the Act. It is this second transaction, the remedial transaction, that is the subject of relief under PTEs 79–15 and 94–71, not the original transaction that led to the controversy.

The current proposed class exemption is more limited than PTEs 79–15 and 94–71. It covers the transaction that occurs when the plan exchanges or releases its cause of action in exchange for consideration from parties in interest [4] in settlement of litigation or threatened litigation. It also covers certain limited extensions of credit incident to the settlement. Unlike PTEs 79–15 and 94–71, this proposed exemption does not provide relief for any remedial prohibited transactions that the parties or the court may consider in an effort to achieve a settlement. In the Department s view, it would not be sufficiently protective of the interests of participants and beneficiaries to permit such remedial prohibited transactions without any involvement by either the Department or the Service. Therefore, absent an applicable statutory, class, or individual exemption, remedial prohibited transactions may not be entered into as part of a settlement pursuant to this proposed exemption. However, the proposed exemption does cover the receipt of cash by a plan in exchange for the release by the plan of a claim against a party in interest in partial or complete settlement of such claim.

The Department notes that many situations in which a plan settles litigation involve no question of a prohibited transaction triggering the need for an exemption. For example, if the parties in interest alleged to have committed prohibited transactions agreed to correct these transactions and this correction complies with section 4975 of the Code, the Department has taken the position that the correction itself will not result in a separate prohibited transaction under Title I of the Act.[5]

Similarly, if a party in interest is willing to reimburse the plan for its losses without requiring a release of the plan's claims, no question of a prohibited transaction would arise because the plan, having not given up its claim, has not engaged in a transaction with a party in interest prohibited under section 406 of the Act. This may occur, for example, where the plan sponsor, concerned that it might be sued for breach of fiduciary duty, decides to make the plan whole for losses.[6]

The Service recently confirmed its position that such a payment may be ''a restoration payment'' not a contribution.[7]

Finally, the Department noted in AO 95–26A (October 17, 1995) that, where a service provider and the plan are settling a dispute related to the provision of services or incidental goods to the plan, the statutory exemption found in section 408(b)(2) of the Act may apply.

The Department has recently received a number of informal inquires regarding the settlement of class-action securities fraud cases where the plan and/or its participants are shareholders. In many securities fraud cases, the plan may also have a cause of action against some of the same parties, based on ERISA violations. The defendants in the ERISA case are likely to overlap with the defendants in the securities fraud litigation. Given the rise in the number of cases in which plans are involved, either as individual litigants or members of the class action, the Department has determined that it would be appropriate to provide an exemption for parties in interest in order to facilitate the settlement of litigation with plans.

III. Description of the Proposed Exemption

The Department is proposing a retroactive and prospective exemption from the restrictions of section 406(a)(1)(A), (B) and (D) of the Act and from the taxes imposed by section

[2] 44 FR 26979 (5/8/79).

[3] 59 FR 51216 (10/7/94), as corrected 59 FR 60837 (11/28/94).

[4] Throughout this discussion we refer to consideration paid by or on behalf of a party in interest settling the case. This would include consideration paid by a third party, such as an insurance company, on behalf of the party in interest. It would also include consideration paid by another party in interest, including a fiduciary.

[5] It should be noted that the Department has no jurisdiction with respect to the meaning of the term correction under section 53.4941(e)–1(c)(1) of the Foundation Excise Tax Regulations, which applies to correction of prohibited transactions under section 4975 of the Code, by reason of Temporary Pension Excise Tax Regulation section 141.4975–13.

[6] For example, see PTE 97–32, 62 FR 31631 (6/10/97).

[7] Rev. Rul. 2002–45, 2002–29 IRB 116 (06/26/02). For the payments to be considered restoration payments, not contributions, there must be a reasonable risk of liability for breach of fiduciary duty.

4975(a) and (b) of the Code by reason of section 4975(c)(1)(A), (B) and (D) of the Code, for the following transactions effective January 1, 1975: (1) The release by the plan of a legal or equitable claim against a party in interest in exchange for consideration in settlement of litigation; and (2) an extension of credit by a plan to a party in interest in connection with a settlement whereby the party in interest agrees to repay, in installments, an amount owed to the plan.

a. Conditions Applicable to All Transactions

Both the retroactive and prospective parts of the proposed exemption are conditioned upon the existence of a genuine controversy involving the plan. The Department believes that this condition is necessary to prevent the plan and parties in interest from engaging in a sham transaction purporting to fall within this class exemption, thus shielding a transaction, such as an extension of credit, that would otherwise be prohibited. The existence of a genuine controversy must be determined by an attorney retained to advise the plan. That attorney must be independent of the other parties to the litigation.

The terms and conditions of the settlement must be negotiated by a fiduciary that has no relationship to, or interest in, the other parties involved in the litigation, other than the plan, that might affect its best judgment as a fiduciary. The Department intends a flexible standard for fiduciary independence, recognizing that the exemption will encompass a wide range of situations, both in terms of the type of litigation and the cost of pursuing such litigation. For example, in some instances where there are complex issues and significant amounts of money involved, it may be appropriate to hire an independent fiduciary having no prior relationship to the plan, its trustee, any parties in interest, or any other parties to the litigation. In other instances, the plan's current trustee, assuming that the trustee's conduct is not at issue, may be an appropriate fiduciary to make the decision on behalf of the plan as to whether to settle the litigation.

The proposed exemption also provides that the settlement must not be part of an agreement, arrangement, or understanding designed to benefit a party in interest. The intent of this condition is not to deny direct benefits to other parties to a transaction but, rather, to exclude transactions that are part of a broader overall agreement, arrangement or understanding designed to benefit parties in interest.

b. Conditions Applicable to Retroactive Transactions

In addition to the conditions applicable to all transactions, if the transactions addressed in this class exemption occurred between January 1, 1975 and the date of publication of the final exemption, the retroactive exemption with respect to any extensions of credit is conditioned upon those extensions of credit bearing a reasonable interest rate taking into account all the facts and circumstances of the settlement.

c. Conditions Applicable to Prospective Transactions

In addition to the conditions applicable to all transactions, the prospective exemption is conditioned upon all terms of the settlement being specifically described in a written agreement or consent decree. Further, the plan must participate in the settlement on a basis no less favorable to the plan than the participation of similarly situated persons that are not plans. As discussed below, in some instances the plan may be able to negotiate a more favorable resolution of the issues than the other parties, given the additional causes of action available under ERISA.

The exemption is conditioned upon the settlement being reasonable, given the likelihood of full recovery and the risk of litigation. Settlement must be in the best interests of the participants and beneficiaries of the plan. The Department notes that, under ERISA, the plan may have additional causes of action not available to the other plaintiffs in the same case. For example, where shareholders have brought a class action securities fraud case against the Company and its officers, the Company's employee benefit plan may be named as a member of the class because it holds employer securities. Such a plan may also have ERISA claims against the Company and some or all of its officers, as well as against other parties. Before entering into a settlement, the plan fiduciary should consider the value of these additional claims. The plan fiduciaries may also be able to pursue claims against defendants not named in the securities fraud case, including knowing participants in the breach. Under certain circumstances, the plan will have additional sources of recovery, including fiduciary liability insurance, the plan's fidelity bond, and the personal assets of the defendants, including their own employee benefit plan accounts.[8]

Where a settlement includes an extension of credit to a party in interest for purposes of repaying an amount owed in settlement of litigation, the prospective exemption requires that the credit terms, including the interest rate, be reasonable, but in no case may the rate be less than the underpayment rate defined in section 6621(a)(2) of the Code.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of plans;

(3) If granted, the proposed class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules.

[8] Section 206(d)(4) of the Act permits a plan to offset the benefits of a participant under an employee pension plan against an amount that the participant is ordered or required to pay, if the order or requirement to pay arises under a judgment or conviction of a crime involving the plan, a civil judgment, including a consent order or decree, entered into by a court, or where there is a settlement agreement between the participant and the Secretary of Labor or the PBGC in connection with a violation of Part IV of ERISA.

Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it was determined that this action is ''significant'' under Section 3(f)(4) of the Executive Order. Accordingly, this action has been reviewed by OMB.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, EBSA is soliciting comments concerning the information collection request (ICR) included in this Notice of Proposed Class Exemption For Release of Claims and Extensions of Credit in Connection with Litigation. Address requests for copies of the ICR to Joseph S. Piacentini, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW, Room N–5718, Washington, DC 20210. Telephone (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers.

The Department has submitted a copy of the proposed revision of a currently approved information collection to OMB in accordance with 44 U.S.C. 3507(d) for review. The Department and OMB are particularly interested in comments that:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration.

Although comments may be submitted through April 14, 2003 OMB requests that comments be received within 30 days of publication of the Notice of Class Exemption For Release of Claims and Extensions of Credit in Connection with Litigation to ensure their consideration.

The proposed class exemption would cover certain transactions engaged in by a plan in connection with litigation. If adopted, the class exemption would make clear that, under specified conditions, plans may settle litigation by: (1) Releasing their claims against parties in interest in exchange for payment by or on behalf of a party in interest; and (2) entering into agreements with parties in interest for payments of agreed-upon amounts in settlement of claims in installments. Without this exemption, for reasons described in detail in the General Background section of this notice, questions may be raised regarding whether a fiduciary or party in interest that agrees to a settlement on behalf of the plan has engaged in a prohibited transaction under sections 406(a)(1)(A), (B), or (D) of the Act, which state, in pertinent part, that a fiduciary shall not cause a plan to engage in a transaction that constitutes a direct or indirect:

Sale or exchange, or leasing, of any property between the plan and a party in interest;

Lending of money or other extension of credit between the plan and a party in interest; or

Transfer to, or use by or for the benefit of, a party in interest, or any assets of the plan.

The Department recognizes that in certain instances it may be advantageous to the plan that is or potentially may be a party to litigation for the plan fiduciary to settle the litigation and release its claims. Settling a cause of action may be of greater benefit to a plan than engaging in lengthy and possibly costly litigation, or pursuing claims that defendants are unlikely to be capable of satisfying, even where a settlement does not fully satisfy amounts at issue. However, questions have been raised with the Department as to whether such a settlement and release of claims, as well as certain arrangements that may be made for payment in satisfaction of a settlement, would result in a prohibited transaction between the plan and the party in interest. Accordingly, the Department is proposing this class exemption in order to facilitate the settlement of litigation with plans.

In order to grant an exemption pursuant to section 408(a) of the Act, the Department must, among other things, make a finding that the terms of the exemption are protective of the rights of participants and beneficiaries of a plan. To support making such a finding, the Department normally imposes certain conditions on fiduciaries and parties in interest that may make use of the exemption. The information collection provisions of the proposed exemption are among these conditions. The information collection provisions are found in sections IV (a), IV (e), and V (a). These requirements are summarized as follows:

Written Agreement. The proposed prospective exemption requires that the terms of the settlement be specifically described in a written agreement or consent decree. The Department believes that execution of a written agreement between parties to litigation is usual and customary business practice. Therefore, no additional burden for a written settlement agreement is expected to be associated with the exemption.

Acknowledgement by a Fiduciary. The proposed prospective exemption also requires that a fiduciary acting on behalf of the plan acknowledge in writing that it is a fiduciary with respect to the settlement of the litigation. Under the Act, a person that exercises any authority or control respecting disposition of [the plan's] assets,[9] is considered a fiduciary. It is anticipated that the applicable plan fiduciary will incorporate this acknowledgement in the written agreement outlining the terms and conditions of its retention as a plan service provider, and already in existence, as part of usual and customary business practice. As such, a written acknowledgement is not expected to impose any measurable additional burden.

Recordkeeping. The proposed prospective exemption would require a plan to maintain for a period of six years the records necessary to enable certain persons to determine whether the conditions of the proposed exemption had been met. The six-year recordkeeping requirement is consistent with the requirements in section 107 of the Act as well as general recordkeeping requirements for tax information under the Code. The requirement is also consistent with other statutory requirements. As such, the Department has not accounted for a burden related to the recordkeeping requirement of this proposed exemption.

The proposed prospective exemption may affect all employee benefit plans, the participants and beneficiaries of those plans, and parties in interest to plans engaging in the specified transactions. It is not possible to estimate the number of respondents or frequency of response to the information collection requirements of the proposed exemption due to the wide variety of litigation involving plans, parties to that litigation, and jurisdictions in which litigation occurs. However, the lack of an ascertainable number of settlements would not impact the hour or cost burden because, as noted, no additional burden is expected to be associated with the information collection requirements of the proposed exemption.

The Department has on other occasions exempted classes of transactions involving settlement agreements under specific circumstances. Pursuant to PTE 94–71 (59 FR 51216), the Department determined that the restrictions of sections 406(a)(1)(A) through (E) and the taxes imposed by sections 4975(a) and 4975(b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a transaction or activity that is authorized by a remedial settlement agreement resulting from an investigation of an employee benefit plan conducted by the Department. Because this proposed exemption applies to settlement agreements involving plans and parties in interest, and the release of claims by the plan, the subject matter is considered to be sufficiently similar to suggest that both the public and the government would be served by combining the clearance of the information collection requests of both exemptions under one OMB control number.

Type of Review: Revision of a currently approved collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Settlement Agreements Between a Plan and Party In Interest (Prohibited Transaction Class Exemption 94–71; and Application No. D–11100).

OMB Number: 1210–0091.

Affected Public: Individuals or households; Business or other for-profit institutions; Not-for-profit institutions.

Frequency of Response: On occasion.

Total Respondents: 4 for existing ICR; no additional for proposed revision.

Total Responses: 1,080 for existing ICR; no additional for proposed revision.

Estimated Burden Hours: 40 for existing ICR; no additional for proposed revision.

Estimated Annual Costs (Operating and Maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Written Comments

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and hearing requests should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the address set forth above.

Section I. Covered Transactions

Effective January 1, 1975, the restrictions of section 406(a)(1)(A), (B) and (D) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A), (B) and (D) of the Code, shall not apply to the following transactions, if the relevant conditions set forth in sections II through IV below are met:

(a) The release by the plan of a legal or equitable claim against a party in interest in exchange for consideration, given by, or on behalf of, a party in interest to the plan in partial or complete settlement of the plan's claim; and

(b) An extension of credit by a plan to a party in interest in connection with a settlement whereby the party in interest agrees to repay, in installments, an amount owed to the plan in settlement of a legal or equitable claim by the plan against the party in interest.

Section II. Conditions Applicable to Transactions Described in Section I

(a) An attorney or attorneys retained to advise the plan on the claim, and having no relationship to any of the parties, other than the plan, determines that there is a genuine controversy involving the plan;

(b) The terms and conditions of the transaction are negotiated at arms' length by a fiduciary who has no relationship to, or interest in, any of the parties involved in the litigation, other than the plan, that might affect the exercise of such person s best judgment as a fiduciary; and

(c) The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.

Section III. Retroactive Conditions for Transactions Described in Section I (b)

In addition to the conditions described in section II, the following condition applies to the transactions described in section I (b) entered into on or before the date of publication of the final exemption in the **Federal Register**

(a) Any extension of credit by the plan to a party in interest in connection with the settlement of a legal or equitable claim against the party in interest is on terms, including the interest rate, that are reasonable.

Section IV. Prospective Conditions for Transactions Described in Section I (a) and (b)

In addition to the conditions described in section II, the following conditions apply to the transactions described in section I (a) and (b) entered into after the date of publication of the final exemption in the **Federal Register:**

(a) All terms of the settlement are specifically described in a written agreement or consent decree;

(b) The plan participates in the settlement on a basis no less favorable to the plan then the participation of

[9] [10]: Section 3(21)(A)(i) of ERISA.

similarly situated persons that are not plans;

(c) Assets other than cash may be received by the plan from a party in interest in connection with a settlement only to the extent necessary to rescind a transaction that is the subject of the litigation. Such assets must be valued at their fair market value, as of the date of the settlement;

(d) The settlement is reasonable in light of the plan's likelihood of full recovery and the risks of litigation, and is in the best interest of the participants and beneficiaries of the plan;

(e) The fiduciary acting on behalf of the plan has acknowledged in writing that it is fiduciary with respect to the settlement of the litigation on behalf of the plan; and

(f) Any loan or extension of credit to a party in interest by the plan in connection with the settlement of a legal or equitable claim against the party in interest is on terms, including the interest rate, that are reasonable, but in no event is the interest rate less than the underpayment rate defined in section 6621(a)(2) of the Code.

Section V. General Conditions

In addition to the conditions described in section II and IV, the following conditions apply to all transactions described in section I entered into after the date of publication of the final exemption in the **Federal Register:**

(a) The plan maintains or causes to be maintained for a period of six years the records necessary to enable the persons described below in paragraph (b) to determine whether the conditions of this exemption have been met, including documents evidencing the steps taken to satisfy section IV (d), such as correspondence with attorneys or experts consulted in order to evaluate the plan's claims, except that:

(1) This recordkeeping condition shall not be violated if, due to circumstances beyond the control of the party responsible for recordkeeping, the records are lost or destroyed prior to the end of the six-year period,

(2) No party in interest other than the party responsible for recordkeeping shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below; and

(b) (1) Except as provided below in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the plan or any duly authorized employee or representative of such fiduciary,

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by the plan, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of the plan or the duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1)(ii)–(iv) shall be authorized to examine trade secrets or commercial or financial information which is privileged or confidential.

Signed at Washington, DC this 6th day of February, 2003.

Ivan L. Strasfeld,

Director, Office of Exemption , Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–3393 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[SGA/DFA 03–102]

Work Incentive Grants

AGENCY: Employment and Training Administration (ETA), DOL.

ACTION: Notice of availability of funds; solicitation for grant applications (SGA).

This notice contains all of the necessary information and forms needed to apply for grant funding.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces the availability of approximately $17 million to award competitive grants designed to enhance the employability, employment and career advancement of people with disabilities through enhanced service delivery in the new One-Stop delivery system established under the Workforce Investment Act of 1998 (WIA). The Work Incentive Grant program will provide grant funds to consortia and/or partnerships of public and private non-profit entities working in coordination with the One-Stop delivery system to augment the existing programs and services and ensure programmatic access and streamlined, seamless service delivery for people with disabilities.

DATES: Applications will be accepted commencing on February 11, 2003. The closing date for receipt of applications under this announcement is March 28, 2003. Applications must be received by 4 p.m. (ET) at the address below. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored.

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: B. Jai Johnson, SGA/DFA 03–102, 200 Constitution Avenue, NW., Room S–4203, Washington, DC 20210. Telefacsimile (FAX) applications will not be accepted. Applicants are advised that mail in the Washington area may be delayed due to mail decontamination procedures.

FOR FURTHER INFORMATION CONTACT: B. Jai Johnson, Grants Management Specialist, Division of Federal Assistance, Telephone (202) 693–3301 (this is not a toll-free number). You must specifically ask for B. Jai Johnson. Questions can also be faxed to B. Jai Johnson, Telephone (202) 693–2879, please include the SGA/DFA 03–102, a contact name, fax and phone numbers. This announcement will also be published on the Internet on the ETA's disAbility online Home Page at: *http://wdsc.doleta.gov/disability/,* and the ETA homepage at *http://www.doleta.gov.* Award notifications will also be published on the ETA homepage.

SUPPLEMENTARY INFORMATION:

Part I. Delivery of Applications

1. *Late Applications.* Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it—(a) was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been post marked by the 15th of that month); or (b) was sent by the U.S. Postal Service Express Mail Next Day Service to addressee not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of applications. The term ''working days'' excludes weekends and Federal holidays. ''Post marked'' means

a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

2. *Withdrawal of Applications.* Applications may be withdrawn by written notice or telegram (including mail gram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt of the proposal.

3. *Hand-Delivered Proposals.* It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4 p.m., ET, at the specified address. Failure to adhere to the above instructions will be basis for a determination of non-responsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and *must be received* by the above specified date and time.

Part II. Authority

Provisions relating to the One-Stop delivery system are at sections 121, 134(c), 189(c) of the Workforce Investment Act (29 U.S.C. 2841, 2864(c), 2939(c); Wagner-Peyser Act (29 U.S.C. 49f(d) and (e) and Department of Labor Appropriations Act for 2002 [Pub. L. 107–116]. Regulations governing the Workforce Investment Act are at 20 CFR parts 652, 660–671, (65 FR 49294 (August 11, 2000)).

Part III. Background

The Workforce Investment Act of 1998 (WIA) establishes comprehensive reform of existing Federal job training programs with amendments impacting service delivery under the Wagner-Peyser Act, Adult Education and Literacy Act, and the Rehabilitation Act. WIA also repeals and supersedes the Job Training Partnership Act. A number of other Federal programs are also identified as required partners in the One-Stop delivery system in order to provide comprehensive services for all Americans to access the information and resources available to assist them in the development and implementation of their career goals. The intention of the One-Stop system is to establish programs and employment service providers in co-located and integrated settings that are accessible for individuals and businesses alike in approximately 600 workforce investment areas established throughout the nation.

WIA establishes State and Local Workforce Investment Boards focused on strategic planning, policy development, and oversight of the workforce system with significant authority for the Governor and chief elected officials in local areas to build on existing reforms in order to implement innovative and comprehensive workforce investment systems. Recognizing that many One-Stop delivery systems may not currently have the capacity to provide comprehensive services to people with disabilities, the Work Incentive Grant is designed to provide seed monies to support the development of the One-Stop infrastructure with an objective of achieving model, seamless and comprehensive services for people with disabilities.

Many people with disabilities are looking to the new workforce investment system to address their employment and training needs in a progressive, enlightened environment with cutting-edge technologies. They also expect the One-Stop delivery system to provide comprehensive services to meet multiple barriers, which frequently limit their access to a productive, economically rewarding work life. These services may include, but are not limited to, the availability of basic skill development; vocational skill training or advanced educational opportunities; apprenticeship and entrepreneurial training; transportation assistance to reach training or employment sites; housing assistance or advice on retaining existing housing upon employment; and access to medical health coverage upon employment. Twenty-three Work Incentive Grants were awarded at the end of October 2000 for a thirty-month period. A second round of Work Incentive Grants were awarded in May 2002 for a twenty-four month period. If you would like more information on round one and two Work Incentive Grant awards, please go to *http://wdsc.doleta.gov/disability/.*

This Solicitation for Grant Applications (SGA) is for grant awards for the Work Incentive Grant program with funds made available July 1, 2002, under the DOL Fiscal Year 2002 appropriation. The Work Incentive Grant program is consistent with the objectives of the President's New Freedom Initiative. This year's Work Incentive Grant announcement continues an emphasis on addressing infrastructure inadequacies and programmatic access of the One-Stop system for people with disabilities, including grant funds available for procuring assistive technology. Statement of Work criteria continues an emphasis on support for staffing capacity but with additional language that is *modeled on* a joint ETA/SSA Disability Program Navigator initiative that will soon be piloted in several states. For more information on the Navigator initiative, please go to: *http://wdsc.doleta.gov/disability/.*

Part IV. Funding Availability and Period of Performance

The Department of Labor anticipates awarding approximately 20–40 grants ranging from $100,000 to $700,000. Awards to one or more local Workforce Investment Boards will generally be limited to no more than $300,000. Awards to state-wide grantees (including a single local Workforce Investment area State) will generally be limited to no more than $700,000. Awards to current Work Incentive Grantees that submit proposals under this SGA will be limited to $150,000 for one or more local Workforce Investment Boards and $500,000 to state-wide grant proposals. The period of performance will be approximately 24 months from the date of execution by the Department. The grant funds will be available for expenditure until June 30, 2005. The Department may elect to extend these grants based on the availability of new funds and satisfactory performance; but in no case may the FY 2002 Work Incentive Grant funds made available under this notice be expended after June 30, 2005.

Part V. Eligible Applicants

Eligible applicants are state departments of labor or applicable state entity administering the Wagner-Peyser and Title I Workforce Investment Act programs; state level Workforce Investment Boards; an individual local Workforce Investment Board; or several local Workforce Investment Boards applying jointly.

The Department of Labor encourages applicants to work in partnership with other disability-related public and private organizations. Partners may include: state/local public agencies such as Vocational Rehabilitation; State Councils for Independent Living; local Centers for Independent Living (CIL's); state mental health agencies, state mental retardation and Developmental Disability Councils; Temporary Assistance for Needy Families (TANF) agencies; and private, non-profit organizations such as disability advocacy and provider organizations, federally-funded disability grant entities, including faith-based entities,

which provide services for people with disabilities.

Statewide applications must propose strategies for enhancing and improving services to people with disabilities involving all local workforce investment areas in the state. The Department will consider statewide proposals from a local Workforce Investment Board, or Boards submitting jointly, but letters of commitment from the state level Workforce Investment Board must be included in the application.

Applications that are not statewide projects but which involve one or more local workforce investment areas should also include letters of commitment from each Local Board covered under the grant, or one letter of commitment signed by all Local Boards in the local area (if all commitments cannot be obtained, explanation must be provided).

Current Work Incentive grantees may apply under this solicitation but must identify significant need and address outstanding deficiencies or propose a significant improvement to the local workforce investment system that has not been accomplished under the current grant. *Provisions regarding eligible applicants identified in the first paragraph of this Part V are still required.*

Indian and Native American Tribal entities, or consortia of Tribes, may apply for Work Incentive Grants. These grants would involve coordination of services and enhancements to a One-Stop system approach for people with disabilities in a specific Indian community or covering multiple Tribal entities that may cut across multiple States and/or workforce investment areas. In such cases, letters of commitment from Local Boards are not required. Grants to Indian and Native American tribal grantees are treated differently because of sovereignty and self-governance established under the Indian Self-Determination and Education Assistance Act allowing for the government-to-government relationship between the Federal and Tribal Governments.

Note: Except as specifically provided, DOL/ETA acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, the OMB circulars require that an entity's procurement procedures must require that all procurement transactions must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

Part VI. Format Requirements for Grant Application

General Requirements—Applicants must submit one (1) copy with an original signature and 2 additional copies of their proposal. The Application Narrative must be double-spaced, and on single-sided, numbered pages with the exception of format requirements for the Executive Summary. The Executive Summary must be limited to no more than two single-spaced, single-sided pages. A font size of at least twelve (12) pitch is required throughout.

There are three required sections of the application. Requirements for each section are provided in this application package. Applications that fail to meet the requirements will not be considered.

Section I—Project Financial Plan
Section II—Executive Summary—Project Synopsis
Section III—Project Narrative (including Attachments, not to exceed 40 pages)

Section I. Project Financial Plan—Section I of the application must include the following three required parts:

- Completed ''SF 424—Application for Federal Assistance'' (See Appendix A of this SGA for required form)
- Completed ''Budget Information Form'' by line item for all costs required to implement the project design effectively. (See Appendix B of this SGA for required forms.)
- Budget narrative/justification, which provides sufficient information to support the reason-ableness of the costs, included in the budget in relation to the service strategy and planned outcomes.

The application must include one SF 424 with the original signatures of the legal entity applying for grant funding and 2 additional copies. Applicants shall indicate on the SF 424 the organization's IRS Status, if applicable. Under the Lobbying Disclosure Act of 1995, Section 18 (29 U.S.C. 1611), an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. For item 10 of the SF 424, the Catalog of Federal Domestic Assistance (CFDA) number for the program is 17.207.

The Project Financial Plan will not count against the application page limits. The financial plan must describe all costs associated with implementing the project that are to be covered with grant funds. All costs should be necessary and reasonable according to the Federal guidelines set forth in the ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' (also known as the ''Common Rule'') codified at 29 CFR part 97, and ''Grants and Agreements with Institutes of Higher Education, Hospitals, and Other Non-Profit Organizations (also known as OMB Circular A–110), codified at 29 CFR part 95, and must comply with the applicable OMB cost principles circulars, as identified in 29 CFR 95.27 and 29 CFR 97.22(b).

Please Note: Work Incentive Grant project designs may incorporate procurement or implementation of software or hardware to assure assistive and accessible technologies in the One-Stop setting, which may equal up to 40% of the grant award.

Section II. Executive Summary—Project Synopsis [*Format requirements for the Executive Summary are limited to no more than two single-spaced, single-sided pages*] Each application shall include a project synopsis, which identifies the following:

The applicant;

The type of organization the applicant represents;

Identification of consortium partners and the type of organizations they represent;

The project service area;

Whether the service area is an entire local workforce investment area, more than one local area, or all local areas in a State;

The amount of funds requested;

The planned period of performance;

The comprehensive strategy proposed for providing seamless service delivery, for addressing the multi-faceted barriers to training and employment that affect people with disabilities, and for improving access for people with disabilities in the mainstream workforce system (i.e., WIA Title I and Wagner Peyser funded programs);

The ways in which the proposal is coordinated with other disability related grant initiatives from DOL, Department of Education (ED), Department of Health & Human Services (HHS), Social Security Administration (SSA), Department of Housing & Urban Development (HUD) or other Federal partners;

—How counseling and other support needs will be addressed in the One-Stop Center system;

—The actions already taken by the State or Local Workforce Investment Board to address the needs of people with disabilities in the One-Stop delivery system;

—The extent to which the One-Stop facilities and satellite site(s) incorporate physical access for people with disabilities;

—The extent to which Vocational Rehabilitation is integrated or coordinated with the One-Stop delivery system;

—Data on the extent to which people with disabilities have been served under the Wagner-Peyser Act, and WIA and previously, under the Job Training Partnership Act;

—The level of commitment the applicant and consortium members have to serving people with disabilities; and

—The extent and manner in which the needs of individuals with disabilities from diverse cultural and/or ethnic groups will be addressed.

Section III. Project Narrative [*Project Narrative plus attachments are limited to no more than forty (40) double-spaced, single-sided, numbered pages. Letters of general support or recommendation for a proposal should NOT be submitted and will count against the page limits.* **Note:** *The Executive Summary is not included in this forty (40)-page limit.*].

The Section III Project Narrative requirements are described below under Part IV—Government Requirements/ Statement of Work section.

Part VII. Government Requirements/ Statement of Work

The Project Narrative, or Section III of the grant application, should provide complete information on how the applicant will address the following Department of Labor priorities for the Program Year (PY) 2002 Work Incentive Grant program to achieve enhancements to the basic infrastructure and service delivery of the One-Stop system, in particular Wagner-Peyser and WIA-funded programs:

(1) Developing comprehensive One-Stop Centers which are welcoming and are valued providers of choice by customers with disabilities seeking workforce assistance by assuring the availability of staff trained on disability issues, personalized employment counseling, knowledgeable support related to addressing employment barriers and work incentives, and availability of accommodations and assistive technologies for diverse disability needs.

(2) Implement strategies, which significantly increase opportunities for skill training, career and job development for people with disabilities resulting in self-sustaining employment and career advancement through participation in the One-Stop system.

Proposals will be rated based upon addressing the areas listed in the four criteria in terms of a comprehensive strategic approach that addresses the Department's priorities noted above. The four criteria (Statement of Need, Comprehensive Service Strategy, Innovation and Model Services, and Demonstrated Capability) must be addressed and include applicant accomplishments or status with regard to each item. *However, the Department does not expect the applicant to incorporate every item listed as part of their strategy and proposal design.* The Department recognizes that the needs and requirements of each state and/or local workforce investment area may be different, and, therefore, some of the options identified may be more relevant than others in order to address the Department's priorities in a particular state and/or local area. For example, a state may have already provided extensive assistive technology throughout their One-Stop Career Centers and need to focus more on other accessibility or accommodation issues, outreach to the disability community and coordination with partner programs and, therefore, the proposal would identify this fact and not direct significant (or any) resources to procuring assistive technology.

With regard to the Department's priority to increase the availability of skill training, employment opportunities and career advancement for persons with disabilities, it has established the following Government Performance and Results Act (GPRA) goals for PY 2003 (July 1, 2003–June 30, 2004):

''Increase the capacity and quality of One-Stop system services for people with disabilities who are registered in the workforce investment area(s) receiving Work Incentive Grants.'' The performance indicators for achieving this goal are:

- 5% more individuals with disabilities will be served than were served in the workforce area(s) in PY 2001 under the adult, dislocated worker and youth programs;
- Of those with disabilities served, 5% more individuals with disabilities will be placed in unsubsidized employment after program exit than were placed in PY 2001; and

Of those placed in the first quarter after program exit, 5% more individuals with disabilities will be employed in the third quarter after exit than were retained in PY 2001.

Note: When determining the focus and objectives of the applicant proposal, it will be helpful for applicants to also review past products and approaches taken by former grantees that are identified on the One-Stop Toolkit Web site at: *http://www.onestoptoolkit.org/* In addition to obtaining strategic approaches that may be helpful, the Department would like to encourage leveraging of products that have been previously developed and reduce duplication where possible.

1. Statement of Need [25 points]

The purpose of the Statement of Need criteria is to establish the overall status of disability related issues in the applicant's workforce investment area, identify strengths and deficiencies to be addressed by the applicant proposal, identify the overall scope of proposal objectives and design, and present the applicant's need for Work Incentive Grant resources to achieve improvements to their workforce system for persons with disabilities. All items must be addressed although a number of them are for information purposes. This criteria will be rated based upon applicant needs identified and proposed approaches to address these needs in the context of the Department's priorities.

For proposals targeted to a specific Indian community or covering multiple Tribal entities which may cut across multiple States and/or local areas, describe the overall approach of the project, and identify the inadequacies and deficiencies of the service delivery to the applicable community, and how the project expects to address these.

A. Identify the number of workforce investment areas in the State and the geographic jurisdiction of each local workforce investment area(s) in the State.

B. Identify which local area(s) in the State will be covered by the project and whether the project is Statewide, involves multiple local areas or is for a single local area.

C. Identify whether a Work Incentive Grant award was received in the October 2000 or May 2002 award announcements covering the identified workforce investment areas in this application and the reasons for application under this Solicitation for Grant Application.

D. Identify partners/consortium members if any, their primary mission irrespective of participation in the grant proposal, and what political and geographic jurisdictions (*e.g.*, cities, counties, subsections of cities/counties) they cover.

E. Describe how the project will address a primary objective of the Work Incentive Grant program to assure the integration of people with disabilities into the workforce investment system, including the availability of Wagner-Peyser and WIA Title I programs and services.

F. Identify the percentage of people with disabilities in the State and/or

local area, including the percentage of people who are beneficiaries of Social Security Disability Insurance (SSDI) and/or Social Security Income Program (SSI).

G. Identify the most recent unemployment rate(s) in the workforce investment area(s) covering the project.

H. Describe any significant deficiencies in the State or local workforce investment system that represent barriers to employment for people with disabilities and what will be accomplished under this grant to address them.

I. Identify additional State and/or local funds and resources that will be used to support the overall objectives of the grant and which will assist in addressing the identified issues the grant project is addressing.

J. Recognizing that the One-Stop delivery system may not have extensive knowledge or skills in working with people with disabilities, describe the level of expertise of the One-Stop system in the local area(s) addressed in the grant and the projects plans for addressing inadequacies.

K. Describe the overall status and actions taken to-date by the One-Stop delivery system to address services to people with disabilities. This should include actions that assured that: (1) State and/or local facilities are physically and programmatically accessible; (2) training is provided to staff; (3) the number and percent of people with disabilities receiving services under WIA and Employment Service programs (or Job Training Partnership Act (JTPA) if applicable, during the previous three years compared with that of people without disabilities.

L. Describe how the applicant will increase services, skill training, employment outcomes, job retention and career advancement for persons with disabilities and how it will achieve the GPRA goals identified above.

2. Comprehensive Service Strategy [25 points]

The purpose of the Comprehensive Service Strategy criteria is to identify the approach proposed by the grantee to establish a welcoming and seamless service delivery system for persons with disabilities. In general, this requires extensive linkages and on-site knowledge of applicable resources that address multiple disability issues and barriers to employment that are commonly experienced by persons with disabilities. Disability issues are often very complex and the disability community is very diverse. These factors present significant challenges to the workforce system in providing first class services to individuals with disabilities. At the same time, the comprehensive nature of the One-Stop Career Center system establishes an infrastructure on the workforce that is uniquely positioned to provide the kind of seamless service delivery that the disability community has long been seeking. A centralized location where information on transportation, housing, Medicare, Medicaid, SSA benefits as well as skill training and employment services can be obtained. The Department will be rating this criteria on the approach proposed by the applicant to address these concerns.

The first item listed below establishes aspects of staff capacity that may be incorporated into the applicant proposal. Please note that applicants are not required to implement Disability Program Navigator positions. However, it has been the experience of many previous Work Incentive Grantees that this kind of staff capacity has been very successful in improving overall services delivery of their One-Stop Career Centers. As with other criteria, the Navigator description provided is neither prescriptive, nor necessarily all inclusive, but establishes examples of the roles and functions of such a position depending upon the needs of the One-Stop and the skills and talents of the individual Navigator.

A. *Staff Capacity—Disability Program Navigator:* Identify how you will ensure that trained staff are available to provide counseling or employment planning support who have adequate knowledge of diverse disabilities. This staff capacity may include knowledge and skills that are very similar to those incorporated in the Disability Program Navigator initiative (joint ETA/SSA initiative identified in Part II, Background). The Disability Program Navigator (''Navigator'') has expertise in and knowledge of a broad range of Federal, State, local, and private work incentive and other employment support programs. The Navigator provides service and information to persons with disabilities, including SSI and SSDI beneficiaries, on how to enter, re-enter, or retain unsubsidized, competitive employment, including SSA work incentives, other employment support programs and the Ticket to Work program. The Navigator also provides information on these resources to other staff and will work directly with people with disabilities to access, facilitate, and ''navigate'' the complex provisions under various programs, including SSA's employment support programs. Navigators also develop comparable expertise and provides training to One-Stop Center staff and other staff on available resources under One-Stop programs, SSA employment support programs and other programs, as well as to individuals with disabilities in order to deliver a comprehensive, seamless delivery of One-Stop services and access to programs that will meet the needs of persons with disabilities in an effective manner. Navigators network and partner with other agencies and organizations such as Benefits Planning, Assistance and Outreach organizations (BPAOs), Protection and Advocacy systems (P&As), Employment Networks (ENs), (including State Vocational Rehabilitation (VR) Agencies), etc. (*e.g.*, SSA FOs, BPAOs, P&As, ENs) to obtain correct information or properly refer individuals with disabilities for additional information and services to assist them transition to careers or maintain current employment. The Navigator may also:

- Provide information on the following programs that support successful entry or re-entry into the workforce: TANF programs and services for people with disabilities, state and local mental health and developmental disability programs and providers, Medicaid and Medicare provisions; state and local housing provisions and supports; transportation subsidies and programs; and other state and/or local services designed to support employment and transition from public benefits to careers.
- Assess, on an ongoing basis, One-Stop Career Center facilities, services, programs and equipment to insure these are accessible to people with disabilities;
- Work with designated Equal Employment Opportunity officer(s), the Local Workforce Investment Board and the One-Stop Operator to ensure that One-Stop Career Center facilities, services, programs and equipment are accessible to people with disabilities, including ensuring the availability of publications and materials in alternate formats; and
- Develop expertise on state of the art rehabilitation technology and local or regional resources that facilitate their application in the One-Stop Center(s) and employer workplace to accommodate diverse functional disabilities.
- Train the One-Stop Career Center Operator and Staff on: disability etiquette; facility, communication and program accessibility requirements; Americans with Disability Act (ADA), Section 504 (Part 32) of the Rehabilitation Act; WIA section 188

(Part 37) definitions and requirements; assessment tools and their applicability.

• Assure provision of a welcoming environment for people with disabilities through development of competence and familiarity of issues affecting persons with disabilities throughout the local workforce investment system.

B. *Other Comprehensive One-Stop Strategies:*

i. Describe changes to be achieved under the grant to create seamless service delivery for One-Stop customers with disabilities.

ii. Describe the process that will be used to maintain and expand the service structure for individuals with disabilities accessing the workforce investment system, including capacity building of the Employment Service delivery component of the One-Stop system.

iii. Identify plans and strategies to develop the capacity of the comprehensive One-Stop Career Center to function as an Employment Network under the Ticket to Work and Work Incentive Improvement Act (TWWIIA). Project plans in this regard should involve building the capacity of the WIA Title I programs and One-Stop system so that more in-depth services and information will be readily available to individuals with disabilities at the comprehensive One-Stop Career Center. The description of increased capacity should be in addition to the State Vocational Rehabilitation Agency since they are an automatic Employment Network provider under Ticket to Work.

iv. Describe linkages with the State and local Independent Living Center (CIL) systems; Mental Health Departments, Mental Retardation/ Developmental Disability Agencies, State Councils on Developmental Disabilities, State Vocational Rehabilitation, and Councils on Employment and other local provider or advocate organizations serving individuals with developmental and/or psychiatric disabilities, including how these agencies fit in a comprehensive service delivery strategy.

v. Describe how people with disabilities who are not eligible for Vocational Rehabilitation services or do not fall under the State's Order of Selection will be served through Wagner-Peyser services or WIA services through the Adult, Dislocated Worker, Youth or National Programs, including programs and services under the Older Americans Act.

vi. Identify the provisions of Memoranda of Understanding or other agreements between the partners, State Vocational Rehabilitation (VR) Agency, the State Rehabilitation Council, and the State or Local Boards in terms of the provision of services to people with disabilities; the plans for cost sharing; the arrangements for referral of people with disabilities between W IA Title I programs and VR as appropriate; the extent of integration and co-location of VR in One-Stop Centers, including sharing of Management Information Systems (MIS) or participation in case management data base technologies; the extent to which there is joint funding of participant services or leveraging of funds to expand access to services; and use of Individual Training Accounts (ITA's) for people with disabilities.

Describe coordination and linkage with regional Disability Business and Technical Assistance Centers (DBTAC's) and State Governors Committees on Employment of People with Disabilities. For example, have DBTAC's provided training to the One-Stop delivery system on the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act, or other disability-related training? If not, are plans to do so incorporated into the applicant project?

Identify public and private non-profit provider entities participating under WIA and Employment Service programs, and which barriers to employment their programs and services that are contributing to the overall applicant proposal may address. Specifically, describe State or local area provisions regarding Medicaid and/or Medicare coverage; current transportation infrastructure; how individuals with all types of disabilities will access training, employment, housing, food stamps and other supportive services.

vii. Describe coordination and linkages with Learning Disabilities and Training Dissemination hub centers established under grants from the U.S. Department of Education's Office of Vocational and Adult Education and how these may be used to provide services to people with learning and other disabilities.

viii. Describe how the project will be coordinated with grant programs, which are funded under the SSA Benefits Planning, Assistance and Outreach Cooperative Agreement and HHS Medicaid Infrastructure Grant programs, if applicable.

ix. Describe how the project is expected to have a positive effect in the operation of the One-Stop delivery system.

3. Innovation and Model Services [25 points]

The purpose of the Innovation and Model Services criteria is to identify strategies the applicant is planning to increase services and employment outcomes for persons with disabilities that access One-Stop Career Centers. This should be within the context of the WIA Title I and Wagner-Peyser programs, utilizing the training or other resources that are available since the Work Incentive Grant program is not typically for direct services to individuals (with the exception of staff capacity such as a Program Navigator described above).

A. Describe your strategy for substantially increasing the number and percent of people with disabilities served, trained and entered into unsubsidized employment through the One-Stop Center system, particularly in WIA Title I programs. This should be related to, or refer back to, the first year of WIA identified under the Statement of Need and service delivery history under JTPA where applicable.

B. Describe the status of accessible technologies within the Comprehensive One-Stop and plans to procure and implement accessible technologies, including video interpreting services for clients who are deaf or electronic door openers for wheelchair users, and how they address current system deficiencies.

C. Identify the scope of technology implementations, if applicable, and the extent to which implementation is comprehensive and across the workforce area(s) and/or statewide.

D. Describe approaches for employment involvement and how these will respond to meeting employer skill shortage needs.

E. Describe how opportunities for competitive employment for individuals with disabilities will be provided or developed within the local workforce investment area and how this is unique or different than what is normally performed by the applicant(s).

F. Describe specific approaches for developing relationships with and support of area employers that establish employment opportunities for individuals with disabilities accessing the One-Stop delivery system, including any commitments by employers to hire these individuals.

G. Describe linkages with Business Leadership Networks (BLNs) (that have been established in approximately 30 states) if applicable.

H. Describe strategies to foster entrepreneurial and self-employment options using ITA's, Plans for Achieving Self-Support (PASS) and other SSA work incentives, and Medicaid coverage for individuals with disabilities who start or return to work.

I. Identify available Federal and State tax incentives available to employers when hiring an individual with a disability; how this information will be marketed and disseminated to employers, the individual and workforce staff; and how employers may use such tax credits to address structural and technological accommodation needs.

L. Describe opportunities for increasing integrated, competitive employment through use of strategies such as individualized job development for individuals with the most significant disabilities currently working in segregated facilities or waiting for employment services.

M. Identify whether assessment tools are used to identify individuals with learning disabilities in the One-Stop delivery system, including plans and processes to identify applicable assessment tools, train staff and incorporate such assessments as part of the service delivery structure.

N. Describe how public supports needed by people with disabilities may be affected by their employment or training and State or local conditions, and actions to sustain benefits and services following successful job placement. For example, does the State or local area have provisions to continue supported or Section 8A housing (The Housing Act of 1992, Title IV), where applicable, for individuals who enter unsubsidized employment?

O. Has the State adopted Medicaid ''buy-in'' options, or are there Medicaid waivers that extend health care coverage for individuals who enter employment?

P. Describe plans for outreach and marketing to the disability community and organizations that represent or work with people with disabilities; and plans for training disability-related organizations on the resources and programs available to them in the One-Stop system.

Q. Identify individualized strategies that establish client control of training funds, VR funds, ITA's, or other funding sources to which these individuals may have access, and co-mingle funds in a seamless, customer friendly manner, including plans for obtaining waivers to the extent program requirements necessitate this.

R. Identify plans or strategies to deploy Ticket to Work voucher provisions for beneficiaries of SSDI and recipients of SSI.

4. Demonstrated Capability [25 points]

The purpose of the Demonstrated Capability criteria is to determine whether the applicant has developed adequate plans, including staff, disability partners and other resources, to effectively carry out the objectives and scope of the proposed project. The Department will rate this criteria based upon the ability of the applicant to do this.

Identify how whether the State or Local Boards will include the disability community in plans.

Identify the critical activities, time frames and responsibilities for effectively implementing the project, including the management and evaluation process for assuring successful implementation of grant objectives.

Include a project organizational chart, which identifies the staff with key management responsibilities, including a matrix of organizational responsibilities of key entities and participating consortium organizations, where applicable.

Describe the specific experience of the applicant(s) in serving people with disabilities, in providing workforce services, in addressing specific barriers to employment, in achieving expected outcomes in the delivery of such services/programs, and in implementing and administering specific project plans of the grant project. For example, such information might include the local Department of Transportation as a key partner agency addressing transportation barriers and how this entity has participated in similar efforts in the past and the success of these past efforts, and potential success of coordination on the applicant(s) grant project.

Part VIII. Monitoring and Reporting

Monitoring: The Department shall be responsible for ensuring the effective implementation of each competitive grant project in accordance with the provisions of this announcement and the terms of the grant award document. Applicants should assume that Department staff, or their designees will conduct on-site project reviews, periodically. Reviews will focus on timely project implementation, performance in meeting the grant's programmatic goals and objectives, expenditure of grant funds on allowable activities, integration and coordination with other resources and service providers in the local area, and project management and administration in achieving project objectives. Work Incentive Grants may be subject to other additional reviews at the discretion of the Department.

Reporting: Grantees will be required to submit quarterly financial and narrative progress reports under the Work Incentive Grant program covering the workforce area(s) included in the grant project design. DOL will analyze data of workforce investment area(s) reports submitted annually under the Workforce Investment Standardized Record Data (WIASARD) for workforce areas covered under the grant [Note: Information on the WIASRD can be found under performance accountability at http://doleta.gov/usworkforce/wia.asp].

Financial reporting will be required quarterly using the on-line electronic reporting system for the Standard Form 269—Financial Status Report (FSR).

A narrative progress report will be required quarterly.

The Department of Labor's evaluation of the Work Incentive Grant program includes a process evaluation that includes extensive information pertaining to achievements of under the grant (*e.g.*, training provided to staff, coordination with disability entities, etc.), summary information pertaining to WIA implementation and the numbers of people with disabilities registered, receiving services, and employed through the One-Stop system, among other areas.

The Department has established performance goals that are consistent with the Department's (GPRA) goals as noted in the introduction of Part VII—Government Requirements/Statement of Work. Work Incentive Grantees will be expected to achieve these performance goals.

Part IX. Review Process and Evaluation Criteria

All applications will be reviewed for compliance with the requirements of this notice. A careful evaluation of applications will be made by a technical review panel, which will evaluate the applications against the rating criteria listed in this SGA. The panel results are advisory in nature and not binding on the Grant Officer. The Department may elect to award grants either with or without discussion with the offeror. In situations without discussions, an award will be based on the offeror's signature on the SF 424, which constitutes a binding offer. The Grant Officer may consider any information that is available and will make final award decisions based on what is most advantageous to the Government, considering factors such as:

Panel findings;

Geographic distribution of the competitive applications; and the availability of funds.

Signed at Washington, DC, this 6th day of February, 2003.

James W. Stockton,

Grant Officer.

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX "A"

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application / Construction / Non-Construction	Preapplication / Construction / Non-Construction	2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name, telephone number and fax number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipa
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
New Continuation Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. PROGRAM IS NOT COVERED BY E.O. 12372

OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

Yes If "Yes," attach an explanation. No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: **Entry:**

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable)

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided.

   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

Item: **Entry:**

12. List only the largest political entities affected (e.g., State, counties, cities.

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories ***APPENDIX "B"***

	(A)	(B)	(C)
1. Personnel	$		
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: *Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).*

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 03–3338 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6800]

State of Alaska Commercial Fisheries Entry Commission Permit No. 59286C, Kokhanok, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 59286C, Kokhanok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3339 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6801]

State of Alaska Commercial Fisheries Entry Commission Permit No. 56376Q, Kokhanok, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 56376Q, Kokhanok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3340 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6802]

State of Alaska Commercial Fisheries Entry Commission Permit No. 68179E, Kokhanok, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 68179E, Kokhanok, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3341 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6804]

State of Alaska Commercial Fisheries Entry Commission Permit No. 58060L, Koliganek, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 58060L, Koliganek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3342 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6805]

State of Alaska Commercial Fisheries Entry Commission Permit No. 57953U, Koliganek, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 57953U, Koliganek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3343 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6806]

State of Alaska Commercial Fisheries Entry Commission Permit No. 57144U, Koliganek, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 57144U, Koliganek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3344 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6809]

State of Alaska Commercial Fisheries Entry Commission Permit No. 56224J, Koliganek, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit No. 56224J, Koliganek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3345 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6876]

State of Alaska Commercial Fisheries Entry Commission Permit No. 57050O, Naknek, AK; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002 in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 57050O, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3346 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6877]

State of Alaska Commercial Fisheries Entry Commission Permit # 65600J, Naknek, AK; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 65600J, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3347 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–6878]

State of Alaska Commercial Fisheries Entry Commission Permit #60600O, Naknek, Alaska; Notice of Termination of Investigation

Pursuant to title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with section 250(a), subchapter D, chapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on September 5, 2002, in response to a petition filed by the Bristol Bay Native Association on behalf of Bristol Bay salmon fishermen, State of Alaska Commercial Fisheries Entry Commission Permit # 60600O, Naknek, Alaska.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 29th day of November, 2002.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–3348 Filed 2–10–03; 8:45 am]

BILLING CODE 4510–30–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board of Directors Meeting

Time & Date: 10 a.m., Friday, February 14, 2003.

Place: Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800 Boardroom, Washington, DC 20005.

Status: Open.

Contact Person for More Information: Jeffrey T. Bryson, General Counsel/Secretary, 202–220–2372.

Agenda:

I. Call to order.
II. Approval of minutes: December 11, 2002, regular meeting.
III. Resolution appointing assistant treasurer.
IV. Audit Committee meeting 1/29/03.
V. Budget Committee meeting 1/31/03.
VI. Treasurer's report.
VII. Executive directors quarterly report .
a. National Insurance Task Force.
VIII. Adjournment.

Jeffrey T. Bryson,

General Counsel Secretary.

[FR Doc. 03–3465 Filed 2–6–03; 5:12 pm]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of February 10, 17, 24, March 3, 10, 17, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 10, 2003

Monday, February 10, 2003

10 a.m.—Briefing on status of Office of Nuclear Reactor Regulation (NRR) Programs, Performance, and Plans (public meeting) (contact: Michael Case, 301–415–1275).

This meeting will be webcast live at the Web address— *http://www.nrc.gov.*

Tuesday, February 11, 2003

10 a.m.—Briefing on Status of Office of the Chief Financial Officer (OCFO) Programs, Performance, and Plans (public meeting) (contact: Patrice Williams-Johnson, 301–415–5732).

This meeting will be webcast live at the Web address— *http://www.nrc.gov.*

Week of February 17, 2003—Tentative

There are no meetings scheduled for the Week of February 17, 2003.

Week of February 24, 2003—Tentative

Monday, February 24, 2003

2 p.m.—Meeting with National Association of regulatory Utility Commissioners (NARUC) (public meeting)

This meeting will be webcast live at the Web address— *http://www.nrc.gov.*

Week of March 3, 2003—Tentative

Monday, March 3, 2003

10 a.m.—Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs—Waste Safety (public meeting) (contact: Claudia Seelig, 301–415–7243).

This meeting will be webcast live at the Web address— *http://www.nrc.gov.*

2 p.m.—Discussion of Security Issues (closed—ex. 1).

Week of March 10, 2003—Tentative

There are no meetings scheduled for the Week of March 10, 2003.

Week of March 17, 2003—Tentative

Thursday, March 20, 2003

10 a.m.—Briefing on Status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (closed—ex. 1).

2 p.m.—Discussion of Management issues (closed—ex. 2)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person of more information: David Louis Gamberoni (301)415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969. In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: February 6, 2003.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–3484 Filed 2–7–03; 12:05 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17Ac2–1, SEC File No. 270–95, OMB Control No. 3235–0084;
Rule 19d–2, SEC File No. 270–204, OMB Control No. 3235–0205.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 17Ac2–1 under the Securities Exchange Act of 1934 (the ''Act'') is used by transfer agents to register with the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, and to amend their registration.

It is estimated that on an annual basis, the Commission will receive approximately 100 applications for registration on Form TA–1 from transfer agents required to register as such with the Commission. Included in this figure are amendments made to Form TA–1 as required by Rule 17Ac2–1(c). Based upon past submissions, the staff estimates that the average number of hours necessary to comply with the requirements of Rule 17Ac2–1 is one

and one-half hours, with a total burden of 150 hours.

Rule 19d–2 under the Act prescribes the form and content of applications to the Commission by persons desiring stays of final disciplinary sanctions and summary action of self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency.

It is estimated that approximately 30 respondents will utilize this application procedure annually, with a total burden of 90 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–2 is 3 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: January 31, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3316 Filed 2–10–03; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 12f–1 SEC File No. 270–139, OMB Control No. 3235–0128

Rule 12f–3 SEC File No. 270–141, OMB Control No. 3235–0249

Rule 24b–1 SEC File No. 270–205, OMB Control No. 3235–0194

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

• Applications for permission to reinstate unlisted trading privileges

Rule 12f–1, originally adopted in 1934 pursuant to Sections 12(f) and 23(a) of the Securities Exchange Act of 1934 (the ''Act'') and as modified in 1995, sets forth the information which an exchange must include in an application to reinstate its ability to extend unlisted trading privileges to any security for which such unlisted trading privileges have been suspended by the Commission, pursuant to Section 12(f)(2)(A) of the Act. An application must provide the name of the issuer, the title of the security, the name of each national securities exchange, if any, on which the security is listed or admitted to unlisted trading privileges, whether transaction information concerning the security is reported in the consolidated transaction reporting system contemplated by Rule 11Aa3–1 under the Act, and any other pertinent information. Rule 12f–1 further requires a national securities exchange seeking to reinstate its ability to extend unlisted trading privileges to a security to indicate that it has provided a copy of such application to the issuer of the security, as well as to any other national securities exchange on which the security is listed or admitted to unlisted trading privileges.

The information required by Rule 12f–1 enables the Commission to make the necessary findings under the Act prior to granting applications to reinstate unlisted trading privileges. This information is also made available to members of the public who may wish to comment upon the applications. Without the rule, the Commission would be unable to fulfill these statutory responsibilities.

There are currently eight national securities exchanges subject to Rule 12f–1. The burden of complying with Rule 12f–1 arises when a potential respondent seeks to reinstate its ability to extend unlisted trading privileges to any security for which unlisted trading privileges have been suspended by the Commission, pursuant to Section 12(f)(2)(A) of the Act. The staff estimates that each application would require approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the rule.

The Commission staff estimates that there could be as many as eight responses annually and that each respondent's related cost of compliance with Rule 12f–1 would be $53.55, or, the cost of one hour of professional work needed to complete the application. The total annual related reporting cost for all potential respondents, therefore, is $428.40 (8 responses × $53.55/response).

Compliance with Rule 12f–1 is mandatory. Rule 12f–1 does not have a record retention requirement *per se.* However, responses made pursuant to Rule 12f–1 are subject to the recordkeeping requirements of Rules 17a–3 and 17a–4 of the Act. Information received in response to Rule 12f–1 shall not be kept confidential; the information collected is public information.

• Termination or suspension of Unlisted Trading Privileges

Rule 12f–3, which was originally adopted in 1934 pursuant to Sections 12(f) and 23(a) of the Act, and as modified in 1995, prescribes the information which must be included in applications for and notices of termination or suspension of unlisted trading privileges for a security as contemplated in Section 12(f)(4) of the Act. An application must provide, among other things, the name of the applicant; a brief statement of the applicant's interest in the question of termination or suspension of such unlisted trading privileges; the title of the security; the name of the issuer; certain information regarding the size of the class of security and its recent trading history; and a statement indicating that the applicant has provided a copy of such application to the exchange from which the suspension or termination of unlisted trading privileges are sought, and to any other exchange on which the security is listed or admitted to unlisted trading privileges.

The information required to be included in applications submitted pursuant to Rule 12f–3, is intended to provide the Commission with sufficient information to make the necessary findings under the Act to terminate or suspend by order the unlisted trading privileges granted a security on a national securities exchange. Without the rule, the Commission would be unable to fulfill these statutory responsibilities.

The burden of complying with Rule 12f–3 arises when a potential respondent, having a demonstrable bona fide interest in the question of termination or suspension of the unlisted trading privileges of a security, determines to seek such termination or

suspension. The staff estimates that each such application to terminate or suspend unlisted trading privileges requires approximately one hour to complete. Thus each potential respondent would incur on average one burden hour in complying with the rule.

The Commission staff estimates that there could be as many as ten responses annually and that each respondent's related cost of compliance with Rule 12f–3 would be $53.55, or, the cost of one hour of professional work needed to complete the application. The total annual related reporting cost for all potential respondents, therefore, is $535.50 (10 responses × $53.55/response).

Compliance with the application requirements of Rule 12f–3 is mandatory, though the filing of such applications is undertaken voluntarily. Rule 12f–3 does not have a record retention requirement *per se.* However, responses made pursuant to Rule 12f–3 are subject to the recordkeeping requirements of Rules 17a–3 and 17a–4 of the Act. Information received in response to Rule 12f–3 shall not be kept confidential; the information collected is public information.

• Rule 24b–1 Documents To Be Kept Public By Exchanges

Rule 24b–1 requires a national securities exchange to keep and make available for public inspection a copy of its registration statement and exhibits filed with the Commission, along with any amendments thereto. Implementing the requirements of Section 24(a), the rule requires that upon Commission action granting an exchange's application for registration or exemption from registration as a national securities exchange, the exchange must make available for public inspection at its offices during reasonable business hours a copy of the registration statement and exhibits filed with the Commission (along with any amendments thereto). However, the rule exempts those portions of this information to which the exchange has filed with the Commission an objection to disclosure and when the Commission has not overruled the objection. While the rule does not specify a retention period, the exchanges generally maintain this information for five years.

There are nine national securities exchanges that spend approximately one half hour each complying with this rule, for an aggregate total compliance burden of four hours per year. The staff estimates that the average cost per respondent is $62.58 per year, calculated as the costs of copying ($13.41) plus storage ($49.17), resulting in a total cost of compliance for the respondents of $563.22.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (a) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (b) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to Office of Management and Budget within 30 days of this notice.

Dated: January 29, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3317 Filed 2–10–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47312; File No. SR–Amex–2002–96]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC to Permit Limited Side-by-Side Trading and Integrated Market Making of Certain iShares Lehman Treasury Index Exchange-Traded Fund Shares and Their Related Options

February 5, 2003.

I. Introduction

On November 18, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to permit limited side-by-side trading and integrated market making of certain iShares Lehman Treasury Index exchange-traded fund shares and their related options.[3] The Exchange filed Amendment No. 1 to the proposed rule change on December 3, 2002.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on December 27, 2002.[5] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as amended.

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change to permit limited side-by-side trading and integrated market making of iShares Lehman Treasury Index ETFs and their related options is consistent with Section 6(b)(5) of the Act.[7]

Previously, the Commission approved a similar proposed rule change by the Amex to allow side-by-side trading and integrated market making of ETFs and trust issued receipts (''TIRs'') and their related options, so long as the component securities of the ETF or TIR satisfy certain criteria.[8] The Exchange now proposes to permit side-by-side trading and integrated market making of broad based iShares Lehman Treasury Index ETFs (composed of highly liquid treasury securities) and their related options. The Commission believes that this proposal does not raise significant new regulatory issues. Specifically, ETFs and TIRs are securities that are based on groups of stocks and whose prices are based on the prices of their component securities. Accordingly, the Commission believes that a market participant's ability to manipulate the price of the ETF, TIR or related option is limited. In addition, the Treasury securities that compose the iShares Lehman Treasury Index ETFs have more than $150 million par outstanding and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The exchange traded funds (''ETFs'') covered by this proposal are the iShares Lehman 1–3 Year Treasury Bond Fund (the ''1–3 Year Bond Fund''), the iShares Lehman 7–10 Year Treasury Bond Fund (the ''7–10 Year Bond Fund''), the iShares Lehman 20+ Year Treasury Bond Fund (the ''20+Year Bond Fund'') (collectively, the ''iShares Lehman Treasury Index ETFs'').

[4] *See* letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Kelly McCormick-Riley, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated November 27, 2002 (''Amendment No. 1'').

[5] *See* Securities Exchange Act Release No. 47071 (December 18, 2002), 67 FR 79174.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232 (July 23, 2002). The criteria that the component securities of an ETF or TIR must meet are set forth in Commentary .03(a) to Amex Rule 1000 and Commentary .02(a) to Amex Rule 1000A.

are highly liquid, which should reduce the likelihood that any market participant has an unfair information advantage about the ETF, its related options, or its component securities, or that a market participant would be able to manipulate the prices of the ETF or related options. Moreover, to address concerns about any market participant having an unfair competitive advantage over others in the crowd, Exchange Rule 174 requires integrated specialists in a side-by-side trading environment to disclose trading interest on the limit order book in iShares Lehman Treasury Index ETFs and related options upon request.[9] Lastly, the Commission expects the Exchange to continuously surveil these trading arrangements regularly and to assess its surveillance procedures to determine whether they are adequate for the new trading arrangements to ensure that market participants do not engage in manipulative or improper trading practices.

II. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR-Amex-2002–96), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3381 Filed 2–10–03; 8:45 am]

BILLING CODE 8010–01–P

[9] Telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Christopher Solgan, Attorney, Division, Commission, on February 4, 2003.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47318; File No. SR–CBOE–2002–49]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to RAES Access Rules for Broad-Based Index Options and Options on Exchange-Traded Funds on Broad-Based Indexes

February 5, 2003.

I. Introduction

On November 1, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to RAES eligibility requirements for market makers in broad-based index options and options on exchange traded funds on broad based indexes. The **Federal Register** published the proposed rule change for comment on December 27, 2002.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of Proposal

Currently, the eligibility of CBOE market-makers to participate in trades through the Retail Automatic Execution System (''RAES'') in option classes on broad-based indexes, including OEX and SPX, as well as option classes on exchange traded funds (''ETFs'')[4] on broad-based indexes (collectively, ''index-related options'') is governed under three different Exchange rules. CBOE Rule 8.16 governs RAES eligibility for all options classes other than DJX, OEX, and SPX. CBOE Rule 24.17 addresses RAES eligibility for market-makers in OEX and DJX. Finally, CBOE Rule 24.16, which is separate yet functionally identical to CBOE Rule 24.17,[5] governs RAES eligibility for market makers in the SPX.

The proposed rule change would broaden CBOE Rule 24.17 to apply to market-makers in all index-related options, and delete the current text of CBOE Rule 24.16, while reserving the rule number for possible future use. The proposal also would amend CBOE Rule 8.16 and clarify that RAES eligibility under CBOE Rule 8.16 would apply only to option classes *other than* broad-based indexes and options on ETFs on broad-based indexes.

In addition, CBOE proposes to add to CBOE Rule 24.17 one set of provisions already present in the current CBOE Rule 8.16 in order to increase and make more consistent the enforcement of market-maker obligations in index-related options. These provisions currently exist as CBOE Rule 8.16(a)(iii) and the related Interpretations and Policies .01–.02. CBOE proposes to add the provisions to CBOE Rule 24.17(b)(vii) and Interpretations and Policies .03–.04. These provisions would authorize the appropriate Market Performance Committee to establish and enforce maximum percentages of transaction and contract volume that market-makers can execute through RAES transactions.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] Specifically, the Commission believes that the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that consolidation of CBOE's RAES eligibility rules for index-related options under one rule should clarify and simplify the treatment of index-related options under CBOE rules and help to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 47033 (December 19, 2002), 67 FR 79198.

[4] For purposes of this rule, trust issued receipts or holding company depositary receipts (as defined in Interpretation .04 to CBOE Rule 1.1), as well as index portfolio receipts (as defined in Interpretation .02 to CBOE Rule 1.1) and index portfolio shares (as defined in Interpretation .03 to CBOE Rule 1.1), are all included within the meaning of the term ''exchange-traded fund.''

[5] While a few subsections of CBOE Rule 24.16 are phrased somewhat differently than their counterparts in CBOE Rule 24.17, they are interpreted and applied by the CBOE as being equivalent. *Compare* CBOE Rules 24.16(a)(ii), (c)(i), and (d)(i) with CBOE Rules 24.17(b)(ii), (c)(i), and (d)(i) (enabling market-makers to ''designate'' that their RAES trades be placed into an individual, joint, or nominee account in which the market-maker participates); *also compare* CBOE Rule 24.16(a)(iii) with CBOE Rule 24.17(b)(ii)–(iv) (establishing requirements for personally logging onto RAES and remaining in the trading crowd while logged in.)

[6] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

provide consistent RAES eligibility treatment for market-makers in the various index-related options. In addition, the proposal would authorize the appropriate Market Performance Committee to establish and enforce maximum percentages of transaction and contract volume that market-makers can execute through RAES transactions. The Commission believes that this should help to ensure that market-makers standing in an index-related option crowd live up to their obligations to improve, update, and honor competitive markets in their appointed option classes in person, and do not simply stand there for the purpose of accepting RAES trades.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–2002–49), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3380 Filed 2–10–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47308; File No. SR–NASD–2003–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Make Permanent Nasdaq's Pilot Program That Makes Available Certain Nasdaq Services and Facilities Until 6:30 P.M. Eastern Time

February 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to make permanent its pilot program that makes available several Nasdaq services and facilities until 6:30 p.m. Eastern Time. The text of the proposed rule change is available at Nasdaq and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Association has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In October 1999, the Commission approved a pilot program (''Program'') that made available certain Nasdaq systems and facilities until 6:30 p.m. Eastern Time.[6] Under the original Program, Nasdaq provided, until 6:30 p.m., the following services: (1) SelectNet Service (''SelectNet''); (2) Automated Confirmation Transaction Service (''ACT''); (3) Nasdaq Quotation Dissemination Service (''NQDS''); and (4) Nasdaq Trade Dissemination Service (''NTDS'').

In August 2002, Nasdaq modified the terminology applicable to the Program to reflect the pending introduction of Nasdaq's SuperMontage system.[7] Since its original approval, the Program has been extended numerous times and has operated continuously.[8] Nasdaq now proposes to make the Program permanent.

Nasdaq proposes no substantive or technical changes to the pilot program. Nasdaq's permanent after-hours program will operate in the same manner as the current Program. Like the pilot, the posting of quotations and/or trading of securities by NASD members during the period of time after Nasdaq's normal market close and before 6:30 p.m. Eastern Time will be entirely voluntary. Quotes entered after-hours will continue to be disseminated by Nasdaq via NQDS,[9] and Nasdaq's ACT system will continue to accept trade reports up to 6:30 p.m. Eastern Time. Nasdaq will also continue to disseminate transaction reports to the public via the SIP. The after-hours session will continue to operate under the following general terms and conditions as set forth in the Commission's original approval order of the pilot:

- Any Nasdaq market maker that wishes to post quotations and trade during the 4 p.m. to 6:30 p.m. time period shall be obligated to post firm two-sided quotations when opening and making its market but may thereafter enter or leave the market on the hour or half-hour up to 6:30 p.m.
- NASD member firms that do not wish to open their market and instead simply send customer or proprietary orders to other market participants for display and/or execution will likewise not be obligated to post firm two-sided quotes.[10]
- Regardless of an NASD member's quotation activity, all transactions in Nasdaq National Market, SmallCap, Convertible Debt and over-the-counter equity securities executed between the hours of 9:30 a.m. and 6:30 p.m. Eastern Time must be reported to Act within 90 seconds.
- NASD members who participate in the after-hours session must operate in conformity with all NASD Rules except those that are limited by their express

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. 17 CFR 240.19b–4(f)(6).

[6] *See* Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999)(SR–NASD–99–57).

[7] *See* Securities Exchange Act Release No. 46398 (August 22, 2002), 67 FR 55290 (August 28, 2002)(SR–NASD–2002–114).

[8] *See* Securities Exchange Act Release Nos. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999)(SR–NASD–99–57); 42481 (March 1, 2000), 65 FR 12310 (March 8, 2000)(SR–NASD–2000–07); 43302 (September 19, 2000), 65 FR 57852 (September 26, 2002)(SR–NASD–2002–56); 43953 (February 12, 2001), 66 FR 10927 (February 22, 2001)(SR–NASD–2001–12); 45503 (March 5, 2002), 67 FR 10955 (March 11, 2002)(SR–NASD–2002–29). The pilot is currently scheduled to terminate on January 31, 2003. See Securities Exchange Act Release No. 46532 (September 23, 2002), 67 FR 61367 (September 30, 2002)(SR–NASD–2002–118).

[9] The best bid and best offer in a particular security will be sent to the consolidated Securities Information Processor (''SIP'') for full public dissemination.

[10] NASD market makers that do not elect to open their quotes would still be obligated to trade report transactions during the 4:00 p.m. to 6:30 p.m. time period consistent with current trade reporting rules.

terms, or by an official interpretation of the NASD, to a specific time period outside of the 4 p.m. to 6:30 p.m. time period. This obligation applies with particular force to the requirement to protect customer limit orders set forth in NASD IM–2110–2.

• The NASD's Short Sale Rule (NASD Rule 3350) will not apply during the after-hours session.

Nasdaq staff will continue to initiate trading halts,[11] and adjudicate clearly erroneous trade disputes in the after-hours session, using the same standards and methods as employed during traditional market hours.[12]

Nasdaq believes the transparency and investor protection benefits resulting from the availability of Nasdaq's systems and facilities after the traditional trading day have proven their worth and should now become permanent.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[13] in general, and with Section 15A(b)(6) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[11] Nasdaq notes that this trading halt authority will be limited to individual stocks only and will be undertaken in consultation with other markets operating after 4:00 p.m. Eastern Time. Market-wide trading halt rules currently in effect rely solely on percentage-based declines in the Dow Jones Industrial Average (''DJIA''), which is not calculated after the 4:00 p.m. close. In the event that a circuit breaker halt, triggered during regular market hours, prevents a normal close of U.S. primary markets, there will be no after-hours trading session that day.

[12] As during the pilot period, NASD Regulation, Inc. (''NASD Regulation'') is of the view that nothing in the instant proposal modifies or limits an NASD member's obligation to comply with the rules of NASD Regulation's Order Audit Trail System (''OATS'') when reporting trading activity taking place between 4:00 p.m. and 6:30 p.m. Eastern Time.

[13] 15 U.S.C. 78o–3.

[14] 15 U.S.C. 78o–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow Nasdaq's after-hours trading program to operate without interruption. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–14 and should be submitted by March 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3318 Filed 2–10–03; 8:45 am]

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[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

Securities and Exchange Commission

[Release No. 34–47307; File No. SR–NASD–2002–134]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Relating to Exemptions from Options Position and Exercise Limits

February 3, 2003.

I. Introduction

On October 1, 2002, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exhange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and rule 19b–4 thereunder,[2] a proposed rule change to amend NASD rule 2860(b)(3)(A) by eliminating options position and exercise limits for positions entered into under certain enumerated hedge strategies and establishing position and exercise limits of five times the standard limit for certain of those strategies when they include an over-the-counter (OTC) option contract. On December 23, 2002, the NASD filed Amendment No. 1 to the proposed rule change.[3] The proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Gary L. Goldsholle, Associate General Counsel, Office of General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 20, 2003 (''Amendment No. 1''). In Amendment No. 1, the

Continued

rule change was published for comment in the **Federal Register** on December 30, 2002.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, and notices and grants accelerated approval to Amendment No. 1 to the proposed rule change.

II. Description of the Proposal

The proposed rule change amends NASD's options position and exercise limits. The proposed rule change establishes six qualified hedge strategies:

1. Where each option contract is ''hedged'' or ''covered'' by 100 shares of the underlying[5] security or securities convertible into the underlying security, or, in the case of an adjusted option, the same number of shares represented by the adjusted contract: (a) Long call and short stock; (b) short call and long stock; (c) long put and long stock; or (d) short put and short stock.

2. *Reverse Conversions*—A long call position accompanied by a short put position, where the long call expires with the short put, and the strike price of the long call and short put is equal, and where each long call and short put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.

3. *Conversions*—A short call position accompanied by a long put position where the short call expires with the long put, and the strike price of the short call and long put is equal, and where each short call and long put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.

4. *Collars*—A short call position accompanied by a long put position, where the short call expires with the long put and the strike price of the short call equals or exceeds the strike price of the long put position and where each short call and long put position is hedged with 100 shares (or other adjusted number of shares) of such the underlying security or securities convertible into such underlying security. Neither side of the short call/long put position can be in-the-money at the time the position is established.

5. *Box Spreads*—A long call position accompanied by a short put position with the same strike price and a short call position accompanied by a long put position with a different strike price.

6. *Back-to-Back Options*—A listed option position hedged on a one-for-one basis with an OTC option position on the same underlying security. The strike price of the listed option position and corresponding OTC option position must be within one strike price interval of each other and no more than one expiration month apart.

Under the proposed rule change, there would be no position and exercise limits when such qualified hedge strategies are effected solely with standardized equity options. In addition, the proposed rule change establishes standardized equity option position and exercise limits of five times the standard limit when one component of such strategies is an OTC option contract. Further, within the list of proposed hedge strategies, NASD proposes that the option component of a reversal, a conversion or a collar position can be treated as one contract rather than as two contracts.

The proposed rule change also modifies the conventional equity options position and exercise limits. First, the proposed rule change expands the hedge exemption for conventional options to include all of the qualified hedge strategies. Second, the proposed rule change increases the conventional equity options position and exercise limits for such qualified hedge strategies to five times the standard limits. Third, the proposed rule change provides that conventional equity options positions under the hedge strategies not be aggregated with other options positions similar to the way that positions under the current equity option hedge exemption and OTC collar aggregation exemption are not aggregated with other options positions.

Under the proposed rule change, the standard position and exercise limits will remain in place for unhedged equity options positions. Once an account reaches the standard limit, positions identified as a qualified hedge strategy would be subject to the increased position limits, or exempted from position limit calculations, as appropriate. The exemption would be automatic (*i.e.*, it will not require pre-approval from NASD) to the extent that a member identifies that a pre-existing qualified strategy is in place or is employed from the point that an account's position reaches the standard limit and provides the required supporting documentation to NASD.[6] The exemption would remain in effect to the extent that the exempted position remains intact and NASD is provided with any required supporting documentation.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities associations[7] and, in particular, the requirements of section 15A of the Act[8] and the rules and regulations thereunder. The Division finds specifically that the proposed rule change is consistent with section 15A(b)(6) of the Act[9] because it is designed to promote just and equitable principles of trade, and to protect investors and public interest.

Position and exercise limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. The NASD proposes to expand the hedge exemption from position and exercise limits. The NASD also proposes to modify the conventional equity options position and exercise limits. The Commission believes it is permissible to expand the current equity hedge exemption without risk of disruption to the options or underlying cash markets. The Commission believes that existing position and exercise limits, procedures for maintaining the exemption, and the reporting requirements imposed by the NASD will help protect against potential manipulation. The Commission notes that the existing standard position and exercise limits will remain in place for unhedged equity option positions. To further ensure against market disruption, the NASD will establish a position and exercise limit equal to no greater than five times the standard limit for those hedge strategies that include an OTC option component.

In addition, according to the NASD, once an account reaches the standard

NASD corrected grammatical errors in the rule language text of the proposed rule change.

[4] *See* Securities Exchange Act Release No. 47080 (December 23, 2002), 67 FR 79676 (December 30, 2002).

[5] NASD represents that the phrase ''securities convertible into the underlying security'' does not include single stock futures products. Telephone Conversation between Gary L. Goldsholle, Associate General Counsel, Office of General Counsel, NASD and Tim Fox, Law Clerk, Division, Commission on December 6, 2002.

[6] Under the proposed rule change, the existing reporting procedures that serve to identify and document hedged positions above a certain threshold continue to apply. Paragraph (b)(5) of NASD rule 2860 requires reporting to NASD of aggregate positions of 200 more contracts of the put class and the call class on the same side of the market covering the same underlying security.

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78*o*-3.

[9] 15 U.S.C. 78*o*-3(b)(6).

limit, positions identified as a qualified hedge strategy would be subject to the increased position limits, or exempted from position limit calculations, as appropriate. The exemption would be automatic (*i.e.*, it will not require pre-approval from NASD) to the extent that a member identifies that a pre-existing qualified strategy is in place or is employed from the point that an account's position reaches the standard limit and provides the required supporting documentation to NASD.[10] The exemption would remain in effect to the extent that the exempted position remains intact and NASD is provided with any required supporting documentation.

The Commission notes that it has previously approved changes to similar rules of the options exchanges that eliminated standardized equity option position and exercise limits for certain qualified hedge strategies and established position and exercise limits of five times the standard limit for certain of those strategies when they include an over-the-counter (OTC) option contract.[11] The Commission does not believe that the proposed rule changes raises novel regulatory issues that were not already addressed and should benefit NASD members by permitting them greater flexibility in using hedge strategies advantageously, while providing an adequate level of protection against the opportunity for manipulation of these securities and disruption in the underlying market.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 1 merely provides technical corrections and clarification to the proposed rule text. The Commission, therefore, believes that granting accelerated approval of Amendment No. 1 is appropriate and consistent with section 15A(b)(6)[12] and section 19(b)[13] of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–134 and should be submitted by March 4, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–NASD–2002–134), as amended, be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3319 Filed 2–10–03; 8:45 am]

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[10] Under the proposed rule change, the existing reporting procedures that serve to identify and document hedged positions above a certain threshold continue to apply. Paragraph (b)(5) of NASD rule 2860 requires reporting to NASD of aggregate positions of 200 more contracts of the put class and the call class on the same side of the market covering the same underlying security.

[11] *See* Securities Exchange Act Release No. 45603 (March 20, 2002), 67 FR 14751 (March 27, 2002) (CBOE–2000–12); Securities Exchange Act Release No. 45650 (March 26, 2002), 67 FR 15638 (Apr. 2, 2002) (AMEX–2001–71); Securities Exchange Act Release No. 45737 (April 11, 2002), 67 FR 18975 (Apr. 17, 2002) (PCX–2000–45); Securities Exchange Act Release No. 45899 (May 9, 2002), 67 FR 34980 (May 16, 2002) (PHLX–2002–33); and Securities Exchange Act Release No. 46228 (July 18, 2002), 67 FR 48689 (July 25, 2002) (ISE–2002–15).

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78s(b).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47310; File No. SR–NASD–2003–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for Limit Order Protection of Securities Priced in Decimals

February 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through May 31, 2003, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretative Material 2110–2—Trading Ahead of Customer Limit Order (''Manning Interpretation'' or ''Interpretation''). Without such an extension these standards would terminate on January 31, 2003. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through May 31, 2003. Nasdaq requests that the Commission waive both the 5-day notice and 30-day operative requirements contained in Rule 19b–4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD's Manning Interpretation requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and SmallCap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Interpretation.

On April 6, 2001,[6] the Commission approved, on a pilot basis, Nasdaq's proposal to establish the following price improvement standards whenever a market maker wished to trade proprietarily in front of its held customer limit orders without triggering an obligation to also execute those orders:

(1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is $0.01; and

(2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01).[7]

Since approval, these standards have operated on a pilot basis and are currently scheduled to terminate on January 31, 2003. After consultation with Commission staff, Nasdaq seeks an extension of its current Manning pilot until May 31, 2003. Nasdaq believes that such an extension provides for an appropriate continuation of the current Manning price-improvement standard while the Commission analyzes the issues related to customer limit order protection for decimalized securities, and reviews Nasdaq's separately filed rule proposal to make this pilot permanent.[8]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through May 31, 2003, and will allow Nasdaq and the Commission to analyze the issues related to customer limit order protection in a decimals environment. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2003–12 and should be submitted by March 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3320 Filed 2–7–03; 8:45 am]

BILLING CODE 8010–01–U

[6] *See* Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (order approving proposed rule change modifying NASD's Interpretative Material 2110–2 —Trading Ahead of Customer Limit Order).

[7] Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is $0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rejected by Nasdaq systems. *See* Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001).

[8] *See* SR–NASD 2002–10.

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47309; File No. SR–NASD–2003–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Extend the Pilot for the Operation of the Short Sale Rule in a Decimals Environment

February 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 31, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend through May 31, 2003, the penny ($0.01) legal short sale standard contained in NASD Interpretative Material 3350 (''IM–3350''). Without such an extension this standard would terminate on January 31, 2003. Nasdaq does not propose to make any substantive changes to the pilot; the only change is an extension of the pilot's expiration date through May 31, 2003. Nasdaq requests that the Commission waive both the 5-day notice and 30-day operative requirements contained in Rule 19b–4(f)(6)(iii)[5] of the Act. If such waivers are granted by the Commission, Nasdaq will implement this rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 2, 2001, the Commission approved, on a one-year pilot basis ending March 1, 2002,[6] Nasdaq's proposal to establish a $0.01 above the bid standard for legal short sales in Nasdaq National Market securities as part of the Decimals Implementation Plan for the Equities and Options Markets. The pilot program has been continuously extended since that date and is currently set to expire on January 31, 2003.[7] Nasdaq now proposes to extend, through May 31, 2003, that pilot program. Extension until May 31st, will allow Nasdaq and the Commission to continue to evaluate the impact of the penny short sale pilot and thereafter take action on Nasdaq's separate pending proposal to make the penny short sale standard permanent.[8] If approved, Nasdaq would continue during the pilot period to require NASD members seeking to effect ''legal'' short sales when the current best (inside) bid displayed by Nasdaq is lower than the previous bid, to execute those short sales at a price that is at least $0.01 above the current inside bid in that security. Nasdaq believes that continuation of this pilot standard appropriately takes into account the important investor protections provided by the short sale rule and the ongoing relationship of the valid short sale price amount to the minimum quotation increment of the Nasdaq market (currently also $0.01).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[9] in that it is designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive both the 5-day notice and the 30-day operative delay. The Commission believes waiving the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through May 31, 2003, and will provide Nasdaq and the Commission with an opportunity to evaluate the impact of the penny short sale pilot. For these reasons, the Commission designates the proposal to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] Securities Exchange Act Release No. 44030 (March 2, 2001), 66 FR 14235 (March 9, 2001).

[7] Securities Exchange Act Release No. 46585 (October 2, 2002), 67 FR 63182 (October 10, 2002).

[8] *See* SR–NASD 2002–09.

[9] 15 U.S.C. 78o–3 (b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

be effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Nasdaq. All submissions should refer to file number SR–NASD–2003–11 and should be submitted by March 4, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–3321 Filed 2–10–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before April 14, 2003.

ADDRESSES: Send all comments regarding whether this information collections is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Margie Rich, Financial Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., Suite 8300, Washington DC 20416

FOR FURTHER INFORMATION CONTACT: Margie Rich, Financial Analyst, (202) 205–7512 or Curtis B. Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: Microloan Program Electronic Reporting System (MPERS).

Form No: N/A.

Description of Respondents: Microloan Program Intermediary Lenders

Annual Responses: 2600.

Annual Burden: 107.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–3388 Filed 2–10–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region III Regulatory Fairness Board

The Small Business Administration Region III Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Thursday, February 20, 2003, at 1 p.m. (e.s.t.) at the Martin Luther King, Jr. Memorial Library, 901 G Street, NW., A–5 Auditorium, Washington, DC 20001, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Sheila Thomas in writing or by fax, in order to be put on the agenda. Sheila Thomas, U.S. Small Business Administration, Washington District Office, 1110 Vermont Avenue, NW., Suite 900, P.O. Box 34500, Washington, DC 20005, phone (202) 606–4000 ext 276, fax (202) 481–5567, e-mail *sheila.thomas@sba.gov.*

For more information, see our Web site at *www.sba.gov/ombudsman.*

Dated: February 4, 2003.

C. Edward Rowe, III,

Counsel, Office of the National Ombudsman.

[FR Doc. 03–3349 Filed 2–10–03; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to authority delegated to the United States Trade Representative (''USTR'') in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415), USTR is making technical corrections to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (''HTS'') as set forth in the annex to this notice. These modifications correct several inadvertent errors and omissions in subheadings 9903.72.30 through 9903.74.24 of the HTS so that the intended tariff treatment is provided.

EFFECTIVE DATE: The corrections made in this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the annex to this notice.

FOR FURTHER INFORMATION CONTACT: Office of Industry, Office of the United States Trade Representative, 600 17th Street, NW., Room 501, Washington, DC 20508. Telephone (202) 395–5656.

SUPPLEMENTARY INFORMATION: On March 5, 2002, pursuant to section 203 of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2253), the President issued Proclamation 7529 (67 FR 10553), which imposed tariffs and a tariff-rate quota on (a) certain flat steel, consisting of: slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel; (b) hot-rolled bar; (c) cold-finished bar; (d) rebar; (e) certain tubular products; (f) carbon and alloy fittings; (g) stainless steel bar; (h) stainless steel rod; (i) tin mill products; and (j) stainless steel wire, as provided for in subheadings 9903.72.30 through 9903.74.24 of the Harmonized Tariff Schedule of the United States (''HTS'') (''safeguard measures'') for a period of three years plus 1 day. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., e.s.t., on March 20, 2002, Proclamation 7529 modified subchapter III of chapter 99 of the HTS so as to provide for such increased duties and a tariff-rate quota. Proclamation 7529 also delegated to the USTR the authority to consider requests for exclusion of a particular product submitted in accordance with the procedures set out in 66 FR 54321, 54322–54323 (October

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

26, 2001) and, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provision created by the annex to that proclamation to exclude such particular product from the pertinent safeguard measure. On April 5, 2002, USTR published a notice in the **Federal Register** excluding particular products from the safeguard measures, and modified the HTS accordingly. 67 FR 16484. On July 3, the President issued Proclamation 7576, which extended the period for granting exclusions until August 31, 2002. On July 12, 2002, and August 30, 2002, USTR published notices in the **Federal Register** excluding additional products from the safeguard measures, and modified the HTS accordingly. 67 FR 46221 and 67 FR 56182.

On March 19, 2002, June 4, 2002, July 12, 2002, August 30, and November 14 of 2002, USTR published **Federal Register** notices (67 FR 12635, 67 FR 38541, 67 FR 46221, 67 FR 56182 and 67 FR 69065, respectively) making technical corrections to subchapter III of chapter 99 of the HTS to remedy several technical errors introduced in the annex to Proclamation 7529. These corrections ensured that the intended tariff treatment was provided. Since the publication of these **Federal Register** notices, additional technical errors and omissions in subchapter III of chapter 99 have come to the attention of USTR. The annex to this notice makes technical corrections to the HTS to remedy these errors and omissions. In particular, the annex to this notice corrects errors in the descriptions of the physical dimensions or chemical composition of certain products excluded from the application of the safeguard measures.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth in the annex to this notice shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the Annex to this notice.

Robert B. Zoellick,

United States Trade Representative.

ANNEX

Subchapter III of chapter 99 of the Harmonized Tariff Schedule (HTS) is modified as set forth in this annex, with bracketed matter included to assist in the understanding of the modifications. The following provisions supersede matter now in the HTS, with the new subheadings being inserted by this notice set forth in columnar format and the material inserted in the HTS columns entitled ''Heading/Subheading'', ''Article Description'', ''Rates of Duty 1 General'', ''Rates of Duty 1 Special'', and ''Rates of Duty 2'', respectively. Subheadings 9903.73.32 and 9903.73.33 shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. e.d.t., July 12, 2002. The remaining provisions of this annex shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. e.s.t., on March 20, 2002, or, in the case of corrections in existing provisions, on or after the date of the inclusion in, or of the previous correction of, the individual HTS provision being corrected.

1. U.S. note 11 to such subchapter III is hereby modified as follows:

(A) In subdivision (c)(xxx)(J), ''N'' is deleted at each instance and ''N/mm^2;'' is inserted in lieu thereof;

(B) In subdivision (c)(xxxix), the language ''during the 12-month period beginning on July 3, 2002, or July 3, 2003, or during the period July 3, 2004, through March 20, 2005, inclusive;'' is inserted after ''30,000'';

(C) In subdivision (c)(ccvii), ''designated as X–083'' is inserted after '', inclusive;'';

(D) Subdivision (c)(cliv) is deleted and the following new provisions are inserted in lieu thereof:

''(cliv) Stainless steel products, designated as N–378, meeting the characteristics described below:

(A) Straight bars and rods, or round wire on spools or in coils, all the foregoing specifications:

(I) Chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 20.50 to 23.50, aluminum 5.0 to 6.0 and balance iron; sometimes referred to as (but not limited to) products known as ''Kanthal APM.'';

(II) Chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 20.50 to 23.50, aluminum 4.30 to 5.30 and balance iron; sometimes referred to as (but not limited to) products known as ''Kanthal D'';

(III) Chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.07, manganese not over 0.40, chromium 20.50 to 23.50, aluminum 4.80 to 5.8 and balance iron; sometimes referred to as (but not limited to) products known as ''Kanthal AF''; or

(IV) Chemical composition (percent by weight): carbon not greater than 0.08, silicon not greater than 0.70, manganese not greater than 0.40, aluminum 5.30 to 6.30, chromium 20.50 to 23.50 and balance iron; sometimes referred to as (but not limited to) products known as ''Kanthal A–1''; or

(V) Chemical composition (percent by weight): carbon not over 0.10, manganese not over 1.00, silicon 1.60 to 2.50, chromium 18.0 to 21.0, nickel 34.0 to 37.0 and balance iron; sometimes referred to as (but not limited to) products known as ''Nikrothal 40'';

(B) Round wire on spools or in coils, the specifications:

(I) Chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 20.50 to 23.50, aluminum 4.60 to 5.60 and balance iron; sometimes referred to as (but not limited to) products known as ''Kanthal DT'';

(II) Chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 20.50 to 23.50, aluminum 4.80 to 5.80 and balance iron; sometimes referred to as (but not limited to) products known as ''Kanthal A''; or

(III) Chemical composition (percent by weight): carbon not over 0.08, silicon not over 0.70, manganese not over 0.50, chromium 14.00 to 16.00, aluminum 3.80 to 4.80 and balance iron; sometimes referred to as (but not limited to) products known as ''Alkrothal 14'';

(E) In subdivision (c)(xxviii)(A), ''397 MPa or more'' is deleted and ''335 to 420 MPa'' is inserted in lieu thereof; ''450 MPa or more'' is deleted and ''385 to 465 MPa'' is inserted in lieu thereof;

(F) In subdivision (c)(xxiv)(B), the word ''maximum'' should be inserted after ''manganese 0.40'' the word ''maximum'' should be inserted after ''chromium 5.40'' and the word ''maximum'' should be inserted after ''molybdenum 1.70'';

(G) In subdivision (c)(xxiv)(C), the word ''maximum'' should be inserted after ''molybdenum 0.65'';

(H) In subdivision (c)(xxiv)(D), the word ''maximum'' should be inserted after ''molybdenum 3.50'';

(I) In subdivision (c)(xxiv)(E), the word ''maximum'' should be inserted after ''molybdenum 0.80'';

(J) In subdivision (c)(xxiv)(F), the word ''maximum'' should be inserted after ''molybdenum 0.40'';

(K) In subdivision (c)(cxxiii), the word ''silicon'' is deleted and ''sulfur'' is inserted in lieu thereof;

(L) In subdivision (c)(cxlviii), each instance of ''0.25 percent or more but'' should be deleted;

(M) In subdivision (c)(lx)(A), the phrase ''sulphur 0.15 maximum'' is deleted and ''sulfur 0.15 minimum'' is inserted in lieu thereof and the phrase ''tellurium added 0.03 minimum'' is deleted and ''tellurium added 0.010 to 0.070'' is inserted in lieu thereof;

2. The enumerated subheadings in such subchapter III are modified as follows:

(A) In subheading 9903.72.51, ''or N–408'' should be inserted after ''X–134'';

(B) In subheading 9903.72.72, ''or N–408'' should be inserted after ''X–134'';

(C) In subheading 9903.72.74, the language ''and entered in an aggregate annual quantity not to exceed 750,000 t'' should be inserted after ''X–087''

(D) In subheading 9903.73.30, ''(A) and (B)'' is inserted after '' 11(b)(xliv)''

(E) In subheading 9903.75.22, the language ''and entered in an aggregate annual quantity not to exceed 1,550 t'' should be inserted after ''subchapter'';

(F) In subheading 9903.77.69, the language ''and entered in an aggregate annual quantity not to exceed 1,500 t'' should be inserted after ''subchapter'';

(G) Subheading 9903.77.71 is deleted;

(H) Subheading 9903.73.47 is deleted;

3. The following new subheadings are inserted in numerical sequence:

	[Flat-rolled...:]			
	[Goods...:]			
''9903.73.32	Enumerated in U.S. note 11(b)(xliv)(C) to this subchapter and entered in an aggregate annual quantity not to exceed 36,000 t.	No change ...	No change ...	No change.
9903.73.33	Enumerated in U.S. note 11(b)(xliv)(D) to this subchapter and entered in an aggregate annual quantity not to exceed 40,000 t.	No change ...	No change ...	Nochange.
	[Goods...:]			
9903.74.59	Enumerated in U.S. note 11(c)(cxviii) to this subchapter	No change ...	No change ...	No change.
9903.74.60	Enumerated in U.S. note 11(c)(cxix) to this subchapter	No change ...	No change ...	No change.
9903.76.23	Enumerated in U.S. note 11(c)(cxl) to this subchapter	No change ...	No change ...	No change''.

Conforming changes

Subheading 9903.72.57 is modified by deleting ''9903.74.58'' and by inserting in lieu thereof ''9903.74.60''.

Subheading 9903.73.18 is modified by deleting ''9903.76.22'' and by inserting in lieu thereof ''9903.76.23''.

[FR Doc. 03–3395 Filed 2–10–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 627X)]

CSX Transportation, Inc.—Abandonment Exemption—in Floyd County, KY

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon an approximately 13.4-mile line of railroad between milepost CON 3.1 at Salisbury and milepost CON 16.5 near Clear Creek Junction in Floyd County, KY. The line traverses United States Postal Service Zip Codes 41604, 41606, 41631, 41636, 41647, and 41649.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 13, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 21, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 3, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to CSXT's representative: Natalie S. Rosenberg, 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void ab initio.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by February 14, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington DC 20423) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339). Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historical preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. See 49 CFR 1002.2(f)(25).

granted and fully abandoned its line. If consumption has not been effected by CSXT's filing of a notice of consumption by February 11, 2004, and there are no legal or regulatory barriers to consumption, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''www.stb.dot.gov.''

Decided: February 5, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–3371 Filed 2–10–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–22

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–22, 26 CFR 601.105 Examination of returns and claims for refund, credits or abatement; determination of correct tax liability.

DATES: Written comments should be received on or before April 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title*: 26 CFR 601.105 Examination of returns and claims for refund, credits or abatement; determination of correct tax liability.

OMB Number: 1545–1533.

Revenue Procedure Number: Revenue Procedure 97–22.

Abstract: This revenue procedure provides guidance to taxpayers who maintain books and records by using an electronic storage system that either images their paper books and records or transfers their computerized books and records to an electronic storage media, such as an optical disk. The information requested in the revenue procedure is required to ensure that records maintained in an electronic storage system will constitute records within the meaning of Internal Revenue Code section 6001.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, Federal Government, and state, local or tribal governments.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 20 hours, 1 minute.

Estimated Total Annual Burden Hours: 1,000,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 5, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3389 Filed 2–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 6559 and 6559–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6559, Transmitter Report and Summary of Magnetic Media and Form 6559–A, Continuation Sheet for Form 6559.

DATES: Written comments should be received on or before April 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (CAROL.A.SAVAGE@irs.gov.), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Transmitter Report and Summary of Magnetic Media (Form 6559) and Continuation Sheet for Form 6559 (Form 6559–A).

OMB Number: 1545–0441.

Form Numbers: 6559 and 6559–A.

Abstract: Forms 6559 and 6559–A are used by filers of Form W–2 Wage and Tax Data to transmit filings on magnetic media. SSA and IRS need signed jurat and summary data for processing purposes. The forms are used primarily by large employers and tax filing services (service bureaus).

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 90,000.

Estimated Time Per Respondent: 18 min.

Estimated Total Annual Burden Hours: 27,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 5, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3390 Filed 2–10–03; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–116–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–116–90, Allocation of Charitable Contributions (§ 1.861–8).

DATES: Written comments should be received on or before April 14, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Allocation of Charitable Contributions.

OMB Number: 1545–1240.

Regulation Project Number: INTL–116–90.

Abstract: Section 1.861–8(e) of the regulation provides guidance concerning the allocation and apportionment of deductions for charitable contributions. It would require a taxpayer to allocate a deduction for charitable contributions solely to United States source gross income or solely to foreign source gross income in certain cases. The required records will be used on audit to verify the United States allocation of these deductions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 5, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3391 Filed 2–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–54–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an

existing final regulation, FI–54–93(TD 8554), Clear Reflection of Income in the Case of Hedging Transactions (§ 1.146–4(d)).

DATES: Written comments should be received on or before April 14, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Clear Reflection of Income in the Case of Hedging Transactions.

OMB Number: 1545–1412.

Regulation Project Number: FI–54–93.

Abstract: This regulation provides guidance to taxpayers regarding when gain or loss from common business hedging transactions is recognized for tax purposes and requires that the books and records maintained by a taxpayer disclose the method or methods used to account for different types of hedging transactions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 110,000.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 22,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 5, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–3392 Filed 2–10–03; 8:45 am]

BILLING CODE 4830–01–P

VALLES CALDERA TRUST

National Environmental Policy Act (NEPA) Procedures of the Valles Caldera Trust for the Valles Caldera National Preserve

AGENCY: Valles Caldera Trust.

ACTION: Notice of proposed procedures to implement NEPA and request for comments.

SUMMARY: The Board of Trustees of the Valles Caldera Trust proposes to adopt procedures for implementation of National Environmental Policy Act (NEPA) to aid the overall management and public use of the Valles Caldera National Preserve. The NEPA procedures for the Trust are intended to supplement federal NEPA procedures of the Council on Environmental Quality (CEQ) found at 40 CFR part 1500 through 1508 and adopted by the Board of Trustees on August 8, 2001. The final NEPA procedures of the Trust are to be maintained by the Trust and will be readily available to the public. It is anticipated that as experience is gained in the implementation of the Trust's NEPA procedures, appropriate improvements will be proposed. Notice of the adoption of final NEPA procedures will be published in the **Federal Register**. The proposed procedures will apply to the fullest extent practicable to analyses and documents begun before adoption of the final procedures by the Board of Trustees of the Valles Caldera Trust.

DATES: Written comments should be submitted by March 31, 2003.

ADDRESSES: Please submit comments to Gary Ziehe, Executive Director, Valles Caldera Trust, 2201 Trinity Drive, Suite C, Los Alamos, NM 87544. Comments can be emailed to: *nepaprocedures@vallescaldera.gov.*

FOR FURTHER INFORMATION CONTACT: Gary Ziehe, Executive Director, Valles Caldera Trust, 2201 Trinity Drive, Suite C, Los Alamos, NM 87544. Telephone: (505) 661–3333

SUPPLEMENTARY INFORMATION:

I. Introduction

The Valles Caldera Preservation Act, Public Law 106–248, (the Act) created the Valles Caldera Trust (the Trust), a wholly owned government corporation, to manage the newly created Valles Caldera National Preserve (the Preserve, formerly the Baca Ranch). The Trust assumed responsibility for managing the lands and resources of the Preserve on August 2, 2002. The Preserve includes approximately 89,000 acres in north-central New Mexico, comprising the majority of the 1860 land grant known as the Baca Location No. 1. A nine-member Board of Trustees governs the Trust and the Executive Director oversees management of the Trust and the Preserve.

The Act established the Preserve to protect and preserve the scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the Preserve, and to provide for multiple use and sustained yield of renewable resources within the Preserve. Under the Act, the Trust will operate the Preserve as a working ranch, consistent with these previously listed purposes. The Trust will develop a plan to achieve a financially self-sustaining operation within 15 years.

The Trust seeks to institutionalize an adaptive management regime for actions it authorizes on the Preserve. These procedures are proposed to integrate the planning, implementation, and monitoring activities of the Trust into a systematic process that will provide transparency in decisionmaking, flexibility in implementation, a strong emphasis on the monitoring of outcomes, and an open opportunity for public input into the system.

II. Legislative History of the Trust

(a) *A unique experiment in managing public land.* The Valles Caldera National Preserve is a unique experiment in the administration of public land. Public Law 106–248 authorizing creation of the Preserve established several findings and purposes for the management of the Preserve.

Congress finds that:

(1) The Baca ranch comprises most of the Valles Caldera in central New Mexico, and constitutes a unique landmass, with significant scientific, cultural, historic, recreational, ecological, wildlife, fisheries, and productive values;

(2) The Valles Caldera is a large resurgent lava dome with potential geothermal activity;

(3) The land comprising the Baca ranch was originally granted to the heirs of Don Luis Maria Cabeza de Vaca in 1860;

(4) Historical evidence, in the form of old logging camps and other artifacts, and the history of territorial New Mexico indicate the importance of this land over many generations for domesticated livestock production and timber supply;

(5) The careful husbandry of the Baca ranch by the current owners, including selective timbering, limited grazing and hunting, and the use of prescribed fire, have preserved a mix of healthy range and timber land with significant species diversity, thereby serving as a model for sustainable land development and use;

(6) The Baca ranch's natural beauty and abundant resources, and its proximity to large municipal populations, could provide numerous recreational opportunities for hiking, fishing, camping, cross-country skiing, and hunting;

(7) The Forest Service documented the scenic and natural values of the Baca ranch in its 1993 study entitled 'Report on the Study of the Baca Location No. 1, Santa Fe National Forest, New Mexico', as directed by Public Law 101–556;

(8) The Baca ranch can be protected for current and future generations by continued operation as a working ranch under a unique management regime which would protect the land and resource values of the property and surrounding ecosystem while allowing and providing for the ranch to eventually become financially self-sustaining;

(9) The current owners have indicated that they wish to sell the Baca ranch, creating an opportunity for Federal acquisition and public access and enjoyment of these lands;

(10) Certain features on the Baca ranch have historical and religious significance to Native Americans which can be preserved and protected through Federal acquisition of the property;

(11) The unique nature of the Valles Caldera and the potential uses of its resources with different resulting impacts warrant a management regime uniquely capable of developing an operational program for appropriate preservation and development of the land and resources of the Baca ranch in the interest of the public;

(12) An experimental management regime should be provided by the establishment of a Trust capable of using new methods of public land management that may prove to be cost-effective and environmentally sensitive; and

(13) The Secretary may promote more efficient management of the Valles Caldera and the watershed of the Santa Clara Creek through the assignment of purchase rights of such watershed to the Pueblo of Santa Clara.

(b) *Purposes for management of the Preserve.* The Act established five purposes for the management of the Preserve:

(1) To authorize Federal acquisition of the Baca ranch;

(2) To protect and preserve for future generations the scientific, scenic, historic, and natural values of the Baca ranch, including rivers and ecosystems and archaeological, geological, and cultural resources;

(3) To provide opportunities for public recreation;

(4) To establish a demonstration area for an experimental management regime adapted to this unique property which incorporates elements of public and private administration in order to promote long term financial sustainability consistent with the other purposes enumerated in this subsection; and

(5) To provide for sustained yield management of Baca ranch for timber production and domesticated livestock grazing insofar as is consistent with the other purposes stated in the Act.

(c) *Management of the Preserve.* A nine-member Board of Trustees appointed by the President is to oversee management of the Preserve and establish operating principles. The Trust is a wholly owned government corporation known as the Valles Caldera Trust. The Trust is empowered to conduct business in the State of New Mexico and elsewhere in the United States in furtherance of its corporate purposes and possess all necessary and proper powers for the exercise of the authorities vested in it. The Trust is to:

(1) Provide management and administrative services for the Preserve;

(2) Establish and implement management policies which will best achieve the purposes and requirements of this title;

(3) Receive and collect funds from private and public sources and to make dispositions in support of the management and administration of the Preserve; and

(4) Cooperate with Federal, State, and local governmental units, and with Indian tribes and Pueblos, to further the purposes for which the Preserve was established.

III. Transition to Implementation of NEPA Procedures

During the consideration of the proposed procedures described here and prior to adoption of final procedures, the Trust will undertake appropriate management actions for the administration of the Valles Caldera National Preserve. Actions that may have environmental consequences within the Preserve will undergo appropriate environmental review following CEQ regulations as adopted by the Trust. The Trust will follow the proposed procedures in the development of proposed actions and decisions. Following the adoption of final procedures, the Trust will make appropriate revisions in accordance with the final procedures to any proposed actions on which a final decision has not been made.

IV. Proposed Procedures for Management of the Preserve

In furthering the intent of Congress and to clarify the operating principles of the Trust, it is necessary and appropriate to establish procedures for the consideration of pending management actions of the Trust and implementation of the NEPA. The following proposed procedures are intended to effectively and efficiently implement the principles of the NEPA and create a collaborative working relationship among the Trust and tribal governments, citizens, and federal, state, and local authorities. A section-by-section description of the proposed procedures follows.

100 Title. This section displays the title of the proposed procedures with its numbering system beginning with 100.

100.1 Authority. This section lists the federal authorities from which the proposed procedures are developed.

100.2 Purpose. The purpose of the proposed procedures is displayed in paragraphs (a) to (d). It is important to note that the proposed procedures are intended to amplify Congressional intent to provide innovative ways to implement effective and efficient management of the Preserve. The proposed procedures are intended to integrate NEPA with the planning and decisionmaking of the Trust, make NEPA more useful to decisionmakers and the public, and ensure that environmental information is readily available before, during, and after decisions are made. The proposed procedures are intended to supplement government-wide NEPA procedures found at 40 CFR 1500–1508. The government-wide, NEPA procedures were adopted by the Board of Trustees on August 8, 2001.

101 Integration of NEPA with Planning and Decisionmaking of the Trust. Sections 101.1 to 101.10 describe the process proposed for integrating NEPA with the planning and decisionmaking of the Trust. In presenting this proposal, it is useful to describe the proposed planning and decisionmaking envisioned by the Trust, as well as specific references to the integration of NEPA procedures.

Each of the sections of the proposed procedures is described below.

101.1 Purposes and Principles. Paragraph (a) references the findings of Congress regarding the purposes and principles for management of the Preserve. The comprehensive management of the Preserve called for in the enabling legislation, is to be achieved through the delegated authorities of the Board of Trustees. The Responsible Official is the person who has the delegated authority to plan and make decisions as authorized by the Board. In the absence of delegation, the Chair of the Board is the Responsible Official.

Paragraph (b) emphasizes the vital role of citizens in the overall management, use, and enjoyment of the Preserve. The monitoring and evaluation of on-the-ground stewardship actions by citizens and the Trust provide the basis for the consideration of future stewardship actions.

The vital role of monitoring and considering new information among the Trust and the public is emphasized in paragraph (c).

Paragraph (d) presents the 10 guiding principles for management of the Preserve adopted by the Board on December 13, 2001. These principles are intended to guide the consideration of all proposed stewardship actions and the evaluation of outcomes. Noteworthy, is the recognition that the whole of the Preserve is greater than the sum of the parts. The stewardship actions implemented within the Preserve are intended to complement the whole of the Preserve and enhance the unique character of the Preserve envisioned by the Congress and enjoyed by the occasional or frequent visitor.

101.2 Terminology. This section of the proposed procedures lists 16 terms and their meanings as they are used throughout the text. It is important to review these terms and their meanings to ensure that they are understood in the context of the proposed procedures. It is intended that these terms are to be used consistently by the Board, staff of the Trust, and citizens involved in the planning and decisionmaking of the Trust.

101.3 Overall Procedures. In paragraphs (a) to (e) of this section, the overall procedures for integrating NEPA within the planning and decisionmaking of the Trust are presented. Paragraph (a) points out that comprehensive management of the Preserve is achieved through strategic guidance adopted by the Board and through the selection and implementation of appropriate stewardship actions. As described in section 101.4 of the proposed procedures, stewardship actions may be site-specific actions as well as broader, planning-related goals, objectives, and performance requirements that set the stage for future stewardship actions. It is the intent of the Trust to maintain open and collaborative working relationships with all government and private parties interested in the Preserve. Positive working relationships are envisioned during the consideration, implementation, and monitoring of stewardship actions. The paragraph concludes with a statement that the information regarding a stewardship action is available to the public in accordance with applicable law.

Paragraph (b) establishes a standard that a clear statement of the purpose and need for each stewardship action must accompany the proposal for action by the Responsible Official. This requirement is made to ensure that each proposed stewardship action has a clear explanation of why it is necessary.

Paragraph (c) states that the Responsible Official, based on public comments or other reasons, may prepare an environmental document to improve understanding of a proposal before making an implementing decision. For many stewardship actions, an environmental document is required. The requirements related to the evaluation of stewardships action and the preparation of the appropriate environmental documents are described section 101.5 of the proposed procedures.

It is stated in paragraph (c) that the outcomes of implemented stewardship actions are monitored to provide information to aid future choices, consistent with the principles of adaptive management. ''Adaptive management,'' though not described in the section 101.2, Terminology, is the preferred means for managing complex natural systems, builds on learning based on common sense, experience, experimentation, and monitoring results. Practices within the Preserve are to be adjusted based on what is learned. It is the intent of the Trust to respond positively to change. Through adaptive management, the Trust's focus is on accelerated learning and adapting through partnerships based on finding common ground where managers, scientists, and citizens learn together to create and maintain sustainable ecosystems. Learning in the achievement of sustainable ecosystems requires an array of strategies and partnerships of managers and citizens working directly with scientists to provide a holistic view of desired conditions and positive, creative responses to change. Through adaptive management, the Trust will provide for multiple use and sustained yield of renewable resources of the Preserve. A requirement to prepare a concise account of the systematic review of monitored outcomes along with review of other information is described in general terms in paragraph (d). This summary of monitored outcomes provides the technical and scientific basis for the development and subsequent revision of the comprehensive management program described in section 101.8, Preparing and Approving the Comprehensive Management Program.

Section 101.3 of the proposed procedures concludes with paragraph (e) which is a statement describing the ongoing review of monitored outcomes and interpretation of information to guide current and future stewardship actions. The overall procedures are intended to efficiently and effectively achieve the goals of the Trust and NEPA and eliminate unnecessary or redundant paperwork.

101.4 Proposing a Stewardship Action and Following its Progress. Paragraphs (a) to (d) describe how a stewardship action is proposed for consideration and the requirements that must be followed. Paragraph (a) states that the Responsible Official may propose a stewardship action at any time. However, each stewardship action must be accompanied by a clear statement of its purpose and need and recorded in a stewardship register. The required items of a stewardship register are displayed in Exhibit I. If the Board approves consideration of a proposed stewardship action, the stewardship register will be made available to the public through appropriate media as soon as practicable and throughout the process, leading either to termination of the proposal or to an implementing decision.

If the Board is proposing a stewardship action for the Preserve as an element of stewardship guidance, the Chair of the Board is the Responsible Official and must evaluate the proposal and follow the procedures in section 101.5, Evaluating a Stewardship Action. This requirement is proposed to ensure that all actions that may have a significant effect on the Preserve are considered through the environmental review procedures of the Trust. It is important to note that each stewardship action proposed by the Board must contain a goal, objective, and performance requirement. The Board may have previously adopted one or more of these three required items prior

to proposing a particular stewardship action. Because of the relationship of goals to objectives and relevant performance requirements, the adoption of one or more of the three required items cannot be proposed without the identification of each in a proposed stewardship action. The consideration of a stewardship action as an element of strategic guidance by the Board must be documented in a stewardship register as described in Exhibit I.

Paragraph (b) states that the public and government officials have many opportunities to review the activities of the Trust and may be asked to comment on a proposed stewardship action. If comments are requested and received within the dates specified, the Responsible Official must consider the comments before making an implementing decision. In keeping with the intent of the Trust to maintain open and collaborative working relationships, comments from the public or government officials may include a wide variety of media including, but not limited to, personal discussion, written text, photos, or electronic communication.

The procedures for amending and keeping the stewardship registers current are described in paragraph (c). The Trust staff responsible for any entry in a stewardship register must record their name and the date of entry to provide an accurate record. The Trust staff may prepare additional documents or electronic media to manage activities associated with one or more stewardship actions and other matters related to administration of the Preserve. These additional documents are intended to aid in the planning, execution, and general management of Trust activities.

Section 101.4 concludes with paragraph (d) that states that the Executive Director of the Trust is responsible for the overall review of agency NEPA compliance and preparation of any necessary environmental documents.

101.5 Evaluating a Stewardship Action. This section and the three that follow, sections 101.51 to 101.53, describe the procedures the Responsible Official must follow in considering the environmental effects of a proposed stewardship action. Section 101.5 in paragraphs (a) through (c) describes how the Responsible Official determines which environmental document is appropriate to aid in consideration of a proposed stewardship action. Paragraph (a) specifies that the Responsible Official must consider the environmental consequences of the proposed stewardship action and the preparation of an environmental document before making an implementing decision.

Paragraph (b) points out that the Responsible Official may, in the absence of extraordinary circumstances, make an implementing decision without the preparation of an environmental document for proposed stewardship actions that do not individually or cumulatively have a significant effect on the human environment.

Paragraph (c) states that if a stewardship action is not within a category of exclusion, the Responsible Official must prepare an environmental document (an environmental assessment, finding of no significant impact, notice of intent, or environmental impact statement) before an implementing decision can be made. The following sections, 101.51 to 101.53, describe the environmental impact statement, environmental assessment, and finding of no significant impact. Procedures for the preparation of a notice of intent to prepare an environmental impact statement are described in CEQ regulations at 40 CFR 1501.7.

101.51 Environmental Impact Statement. This section in paragraphs (a), (b), and (c) describes when the Responsible Official must prepare an environmental impact statement before making an implementing decision for a proposed stewardship action. In paragraph (a) the content and procedures for the preparation of an environmental impact statement are referenced to 40 CFR part 1502. An environmental impact statement must be prepared if the outcome of a proposed stewardship action is known or suspected to create a significant effect on the human environment or if it is otherwise desirable to prepare a statement. If the Responsible Official knows or suspects that implementation of a stewardship action may have a significant impact on the human environment, an environmental impact statement must be prepared.

Paragraph (b) states that an implementing decision for one or more stewardship actions described in an environmental impact statement must be documented in a record of decision. Except for special circumstances outlined in CEQ regulations at 40 CFR 1506.10(d), 1506.11, and 1502.9(c), a record of decision cannot be signed by the Responsible Official until 30 after the final environmental impact statement is made available to the public by the Environmental Protection Agency. The environmental impact statement and record of decision is appended by reference to one or more appropriate stewardship registers.

Paragraph (c) specifies when an environmental impact statement must be prepared. An environmental impact statement is normally required for the following implementing decisions:

(1) Adoption of one or more stewardship actions that guide or prescribe alternative uses of the Preserve upon which future stewardship actions will be based that may be significant as described in 40 CFR 1508.27;

(2) Construction and operation of a visitor center with associated public access to the Preserve; and

(3) Activities or groups of activities within one or more stewardship actions that are anticipated to create outcomes that may be significant as described in 40 CFR 1508.27. Examples are listed for (c)(1) and (3) in the proposed procedures. The implementing decisions described in (c)(1) are typically referred to as ''planning-related decisions''. These decisions, elements of strategic guidance (101.2), typically do not undertake specific actions on the ground, except for those that may modify one or more ongoing stewardship actions. Stewardship actions by the Board are critical choices in setting the stage, the expectations and bounds, for future stewardship actions. These decisions are intended to follow the portrayal of federal actions that guide or prescribe alternative uses of federal resources upon which future agency action will be based as described in CEQ regulations at 40 CFR 1508.18(b)(2). Many people regard these planning-related decisions and their potentially significant consequences as paramount factors in the effective stewardship of natural resources. It is appropriate to consider the effects of these decisions before their adoption by the Board.

101.52 Environmental Assessment. This section, in paragraphs (a) through (d), describes the format for preparation of an environmental assessment. Paragraph (e) lists the types of implementing decisions that are anticipated to have environmental assessments prepared to aid their consideration by the Responsible Official and the public.

Paragraph (a) states that an environmental assessment is prepared by the Responsible Official to aid in determining whether to prepare an environmental impact statement, to prepare a finding of no significant impact, to otherwise aid compliance with NEPA, or to facilitate preparation of an environmental impact statement when one is necessary. This is an

important aspect of NEPA procedures that is often overlooked or not well understood. The environmental assessment is a systematic means to review the consequences of a proposed stewardship action, consider reasonable alternatives to the proposal, and evaluate the overall consequences. Often, through public comment, dialog, and study of the proposal, substantial improvements can be identified.

Paragraph (b) describes a very useful method the Trust is proposing to reduce unwanted paperwork and improve overall effectiveness. The environmental assessment of one or more stewardship actions is combined with one or more relevant stewardship registers to create a concise document or set of documents that describe one or more stewardship actions and alternatives that meet the identified purpose and need. The environmental analysis of the proposed stewardship action and alternatives is appended to or integrated with one or more stewardship registers (40 CFR 1506.4).

The following paragraph, (c), describes a very important principle guiding the environmental review of a proposal. The purpose of the appended or integrated information is to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal, which involves unresolved conflicts concerning alternative uses of available resources. The preceding sentence, similar to section 102 (E) of NEPA, is the basis for developing alternative means to meet the identified purpose and need for a proposed stewardship action. It is anticipated that the public will play a vital role in aiding the Trust in identifying reasonable alternatives to proposals. Paragraph (d) states that the combined document includes a brief discussion of the purpose and need for the proposal, of alternatives, of the environmental impacts of the proposal and alternatives, and a listing of agencies and persons consulted. It is anticipated that the integration of these four items within the stewardship register will provide a very efficient and effective means to accomplish and record appropriate environmental reviews.

Section 101.52 concludes with paragraph (e) that describes the types of implementing decisions that are normally accompanied by an environmental assessment.

101.53 Finding of No Significant Impact. This section of the proposed procedures in paragraphs (a) and (b) describes the preparation and documentation of a finding that, based on the information in an environmental assessment, the Responsible Official determines that the proposed stewardship action will not have a significant impact on the human environment. Paragraph (a) states. If, based on the information in the combined document (101.52(d)), the Responsible Official determines that the environmental consequences of the proposal will not have a significant effect on the human environment, the finding and reasons for it must be stated in a finding of no significant impact.

Paragraph (b) describes the content of a finding of no significant impact by stating that a finding of no significant impact is combined with the stewardship register and environmental assessment. The paragraph and section concludes with a statement that if such a finding cannot be made, or it is otherwise desirable, the Responsible Official may cancel, modify, or postpone the proposal while additional information is made available, or issue a notice of intent that an environmental impact statement will be prepared and considered.

Paragraphs (c) and (d) describe the content of a finding of no significant impact and procedures for public review.

The section concludes with paragraph (e) that is a requirement that the Responsible Official must use the factors of ''significantly'' as defined in 40 CFR 1508.27 for the determination that a proposal will have no significant effect on the human environment.

101.6 Categorical Exclusions. The categories of stewardship actions that may be excluded from the preparation of an environmental document are listed in this section.

101.7 Public Involvement. The procedures for engaging the public in the consideration of a proposed stewardship action are presented in paragraphs (a) through (e) of this section. Paragraph (a) states. Opportunities for the public to provide input and maintain a dialogue with the Trust regarding a proposed stewardship action may be triggered by a combination of notice through appropriate media, public meetings, targeted outreach, agency consultation, scoping, and public review of relevant documents.

Paragraph (b) states that the Trust will identify the appropriate stages during the consideration of a proposed stewardship action and for specific forms of public review and input to the Responsible Official. For stewardship actions involving natural and cultural resources on the Preserve, the Responsible Official will notify the public that the stewardship action is being proposed, and that a stewardship register is available for review. The Trust will take into account public input received at this stage of the proposal to help determine the appropriate goals, objectives, and performance requirements that will guide further development of the proposed stewardship action.

Paragraph (c) explains that the public's reaction to a proposed stewardship action will be critical in planning for the appropriate level of public involvement throughout the rest of the NEPA process. The public's reaction will also help determine the extent to which the Trust develops alternatives to the proposed action.

Paragraph (d) has the requirement that all proposed stewardship actions involving the lands, resources, and facilities of the Preserve will require authorization by the Board of Trustees at a public meeting, during which public comments will be considered and recorded.

The section concludes with paragraph (e) that states that the Trust will provide a reasonable time period for public review and comment upon the completion of an environmental assessment, unless the Responsible Official determines that:

(1) Emergency circumstances exist requiring immediate implementation of the proposed action; or

(2) Based on public input earlier in the process, the level of public interest does not warrant a comment period.

101.8 Making and Recording an Implementing Decision. This section of the proposed procedures contains three requirements in paragraphs (a), (b), and (c) regarding making and recording an implementing decision for a proposed stewardship action. The section begins with paragraph (a) that states the Responsible Official may make an implementing decision to authorize a stewardship action after completion of 101.5 and compliance with the listed conditions.

Paragraph (b) requires signature of the Responsible Official and date of the implementing decision.

Paragraph (c) has a provision for making minor corrections or adjustments to stewardship actions to improve efficiency, correct minor errors, or otherwise improve performance.

101.9 Monitoring Outcomes and Considering New Information. This section describes the steps necessary to ensure that new information is considered and, if relevant to on-going or planned stewardship actions, appropriately acted upon by the Responsible Official. Paragraph (a) requires that the Responsible Official

must evaluate each monitored outcome identified in the stewardship register. As information from monitoring is obtained and interpreted, conclusions are to be recorded in the appropriate stewardship register by the responsible Trust staff.

Paragraph (b) is a requirement to consider new information and the influence that information may have upon ongoing or completed stewardship actions.

101.10 Preparing and Approving the Comprehensive Management Program.

This is the final section of the proposed procedures. In paragraphs (a) to (c), this section describes the content, preparation, and approval of the comprehensive management program for the Preserve. The comprehensive management program is intended to provide an easy to use record of the management of the Preserve and a readily available reference for interested citizens. Paragraph (a) states that the comprehensive management program summarizes monitored outcomes, describes past and ongoing stewardship actions of the Preserve, and displays the strategic guidance for the Preserve adopted by the Board of Trustees. The comprehensive management program provides a basis for determining the cumulative effects of the management of the Preserve and provides convenient public communication of accomplishments and desired outcomes.

Paragraph (b) has the requirement that a comprehensive management program must be prepared by the Responsible Official two years after the Trust assumes management responsibility of the Preserve, thereafter, it must be reviewed and appropriately updated at least once every five years or when appropriate as determined by the Board of Trustees.

The section concludes in paragraph (c) with a requirement that upon completion by the Responsible Official, the comprehensive management program must be reviewed and approved by the Board of Trustees or returned to the Responsible Official for additional preparation.

Valles Caldera Trust—National Environmental Policy Act Procedures for the Valles Caldera National Preserve

Contents

100 Authority and Purpose

100.1 Authority
100.2 Purpose

101 Integration of NEPA with Planning and Decisionmaking of the Trust

101.1 Purposes and Principles
101.2 Terminology
101.3 Overall Procedures
101.4 Proposing a Stewardship Action and Following its Progress
101.5 Evaluating a Stewardship Action
101.51 Environmental Impact Statement
101.52 Environmental Assessment
101.53 Finding of No Significant Impact
101.6 Categorical Exclusions
101.7 Public Involvement
101.8 Making and Recording an Implementing Decision
101.9 Monitoring Outcomes and Considering New Information
101.10 Preparing and Approving the Comprehensive Management Program

100 Authority and Purpose

100.1 Authority. The National Environmental Policy Act of 1969 (NEPA), Pub. L. 91–190, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), E.O. 11514, Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977, CEQ regulations at 40 CFR Parts 1500 though 1508, and The Valles Caldera Preservation Act, Pub. L. 106–248.

100.2 Purpose. To implement the comprehensive program for the management of the lands, resources, and facilities of the Valles Caldera National Preserve and achieve the purposes of NEPA, it is necessary and appropriate to establish these procedures. It is the intent of the Trust and managers of the Preserve to:

(a) Integrate the principles and requirements of NEPA with the planning and decisionmaking processes of the Trust;

(b) Implement these procedures to make the NEPA process more useful to decisionmakers and citizens by eliminating unwanted paperwork and utilizing a wide variety of means to gain understanding of the human environment and natural resources of the Preserve and communicate this to the public;

(c) Ensure that environmental information is readily available in a variety of useful forms to decisionmakers and citizens before decisions are made, and ensure that environmental information is utilized to guide adaptive management during and after actions are taken; and

(d) Adopt these procedures in supplement to the regulations at 40 CFR parts 1500 through 1508, referred to as the CEQ regulations for implementing the procedural provisions of the NEPA.

101 Integration of NEPA With Planning and Decisionmaking of the Trust

101.1 Purposes and Principles.

(a) The findings of Congress (Public Law 106–248, Title I, section102) describe the unique character of the Valles Caldera. The purposes for management of the Preserve and the management authorities of the Valles Caldera Trust are described in Title I, section 105 and section 106 of Public Law 106–248. The comprehensive management of the lands, resources, and facilities of the Preserve is achieved through stewardship actions authorized by the Trust's Board of Trustees.

(b) Citizens play a vital role in the overall management, use, and enjoyment of the Preserve.

(c) Monitoring and evaluation of stewardship actions, research, and detailed studies provide the public and the Trust with the basis for adapting future stewardship actions to achieve the goals of the Trust and the requirements of NEPA.

(d) Stewardship of the Preserve addresses all programs of the Preserve with the recognition that the whole is greater than the sum of the parts. Management of the Preserve is guided by the following values of the Trust and vision adopted by Board of Trustees on December 13, 2001:

(1) We will administer the Preserve with the long view in mind, directing our efforts toward the benefit of future generations;

(2) Recognizing that the Preserve imparts a rich sense of place and qualities not to be found anywhere else, we commit ourselves to the protection of its ecological, cultural, and aesthetic integrity;

(3) We will strive to achieve a high level of integrity in our stewardship of the lands, programs, and other assets in our care. This includes adopting an ethic of financial thrift and discipline and exercising good business sense;

(4) We will exercise restraint in the implementation of all programs, basing them on sound science and adjusting them consistent with the principles of adaptive management;

(5) Recognizing the unique heritage of northern New Mexico's traditional cultures, we will be a good neighbor to surrounding communities, striving to avoid negative impacts from Preserve activities and to generate positive impacts;

(6) Recognizing the religious significance of the Preserve to Native Americans, the Trust bears a special responsibility to accommodate the religious practices of nearby tribes and pueblos, and to protect sites of special significance;

(7) Recognizing the importance of clear and open communication, we commit ourselves to maintaining a productive dialogue with those who would advance the purposes of the

Preserve and, where appropriate, to developing partnerships with them;

(8) Recognizing that the Preserve is part of a larger ecological whole, we will cooperate with adjacent landowners and managers to achieve a healthy regional ecosystem;

(9) Recognizing the great potential of the Preserve for learning and inspiration, we will strive to integrate opportunities for research, reflection and education in the programs of the Preserve; and

(10) In providing opportunities to the public we will emphasize quality of experience over quantity of experiences. In so doing, while we reserve the right to limit participation or to maximize revenue in certain instances, we commit ourselves to providing fair and affordable access for all permitted activities.

101.2 Terminology.

Comprehensive management program. ''Comprehensive management program'' means the document or set of documents describing the comprehensive program for the management of the lands, resources, and facilities of the Preserve that includes all stewardship registers, a summary of monitored outcomes, and the strategic guidance adopted by the Board of Trustees.

Environmental documents. ''Environmental documents'' include the documents specified in 40 CFR 1508.9 (environmental assessment), 1508.11 (environmental impact statement), 1508.13 (finding of no significant impact), and 1508.22 (notice of intent).

Extraordinary circumstances. ''Extraordinary circumstances'' means conditions associated with a stewardship action that is normally categorically excluded and recognized as likely to create one or more outcomes that may significantly affect the human environment.

Goal. ''Goal'' means a desirable condition of the Preserve sought by the Responsible Official and/or a desirable condition as described in Public Law 106–248 or within the values and vision adopted by the Trust (101.1(d)).

Finding of no significant impact. ''Finding of no significant impact'' means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (40 CFR 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (40 CFR 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference (40 CFR 1508.13).

Implementing decision. ''Implementing decision'' means the authorization by the Responsible Official to implement or adopt one or more stewardship actions.

Monitored outcome. ''Monitored outcome'' means the short-, mid-, or long-term outcome selected for systematic evaluation.

Objective. ''Objective'' means the desired outcome that can be meaningfully evaluated by location and timing within the Preserve.

Outcome. ''Outcome'' means the result or consequence of a stewardship action that can be meaningfully evaluated by location and time of occurrence. For purposes of these procedures, this term has the same meaning as impact or effect. For convenience in communication, ''outcomes'' may be beneficial or detrimental, and are grouped from their date of origin considering their anticipated duration as: short-term, anticipated to occur over 0 to 3 years; mid-term, anticipated to occur over 3 to 10 years; and long-term, anticipated to occur for 10 years or longer.

Performance requirement. ''Performance requirement'' means the limitation placed on the implementation of a stewardship action necessary for compliance with applicable laws, regulations, standards, mitigating measures, or generally accepted practices.

Purpose and need. ''Purpose and need'' means a concise explanation why a stewardship action is being proposed.

Responsible Official. ''Responsible Official'' means the official of the Trust with authority delegated by the Board of Trustees to make an implementing decision and, in the absence of delegation, the Chair of the Board of Trustees.

Stewardship action. ''Stewardship action'' means:

(a) An activity or group of activities associated with the Preserve consisting of at least one goal, objective, and performance requirement proposed or implemented by the Responsible Official; or

(b) An element of strategic guidance for the Preserve consisting of at least one goal, objective, and performance requirement proposed or adopted by the Board of Trustees.

Stewardship register. ''Stewardship register'' means a concise document available to the public and readily amended and/or appended over time depicting the location, development, implementation, and monitoring of a stewardship action.

Strategic guidance. ''Strategic guidance'' means adoption by the Board of Trustees of one or more of the following elements:

(a) One or more goals for all or a portion of the Preserve;

(b) Direction to consider one or more stewardship actions or an administrative matter related to the operation of the Preserve; or

(c) One or more stewardship actions.

Summary of monitored outcomes. ''Summary of monitored outcomes'' means a concise account of the systematic review of monitored outcomes based on interpretive information from, but not limited to, observations, studies, public comment, research investigations, natural resources data or information summaries, and other sources to provide the technical and scientific basis for considering the cumulative effects of the past, present, and reasonably future actions of the Trust.

101.3 Overall Procedures.

(a) The Trust achieves comprehensive management of the Preserve by adopting strategic guidance and selecting and implementing appropriate stewardship actions. It is the intent of the Trust to maintain open and collaborative working relationships among all interested and affected citizens, Tribal governments, federal and state agencies, and others during the consideration, implementation, and monitoring of all stewardship actions. Information regarding stewardship actions is recorded within stewardship registers that are available to the public in accordance with applicable law.

(b) The Responsible Official, as authorized by the Board of Trustees, may propose a stewardship action only if it is accompanied by a clear statement of its purpose and need.

(c) Based on the known or suspected outcomes of a stewardship action, or for other reasons, the Responsible Official may prepare an environmental document to improve understanding and to assist in making an implementing decision. The outcomes of implemented stewardship actions are monitored to aid future choices, consistent with the principles of adaptive management.

(d) The Responsible Official must prepare a summary of monitored outcomes at least once every five years beginning on August 2, 2002. The summary of monitored outcomes provides the technical and scientific basis for the comprehensive management program of the Preserve.

(e) The on-going review of monitored outcomes, public dialog, and the interpretation of evolving natural and social environments aids the Trust and others in the consideration of the purpose and need for necessary and appropriate stewardship actions within the Preserve. The overall procedures are intended to efficiently and effectively achieve the goals of the Trust and NEPA and eliminate unnecessary or redundant paperwork.

101.4 Proposing a Stewardship Action and Following Its Progress.

(a) When a stewardship action is proposed and its purpose and need is described by the Responsible Official and authorized for continued consideration by the Board of Trustees, the stewardship register (Exhibit I) will be made available to the public through appropriate media as soon as practicable and throughout the process, leading either to termination of the proposal or to an implementing decision. The stewardship register will also, as relevant, contain information regarding completion of the stewardship action and monitoring of one or more outcomes.

(b) The public and government officials are provided many opportunities to review the activities of the Trust and may be requested by the Responsible Official to comment on a proposed stewardship action, its purpose and need, and/or anticipated outcomes. If comments are requested and received within the dates specified, the Responsible Official must consider the comments before making an implementing decision.

(c) As information in the stewardship register is amended and/or appended, the date and nature of the change to the stewardship register and name of the person transcribing the amended or appended information must be recorded to provide an accurate record. The Trust may prepare and use documents or appropriate electronic media depicting administrative operations to aid the planning, execution, and record keeping of stewardship actions or for other purposes.

(d) To further the purposes of the Trust and NEPA, the Executive Director of the Trust is responsible for overall review of agency NEPA compliance and preparation of any necessary environmental documents.

101.5 Evaluating a Stewardship Action.

(a) To aid in the understanding of the purpose and need and/or the anticipated outcome of a pending stewardship action, the Responsible Official must consider the environmental consequences of the stewardship action and the preparation of an environmental document before making an implementing decision.

(b) The Responsible Official, in the absence of extraordinary circumstances, may make an implementing decision without the preparation of an environmental document for those stewardship actions that do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect.

(c) If a stewardship action is not within a categorical exclusion listed in 101.6, an environmental document must be prepared and considered before the Responsible Official can make an implementing decision.

101.51 Environmental Impact Statement.

(a) The Responsible Official must prepare and consider an environmental impact statement as described in 40 CFR part 1502 if the outcome of a proposed stewardship action may create a significant impact on the human environment or it is otherwise desirable.

(b) An implementing decision for one or more stewardship actions under review in an environmental impact statement must be documented in a record of decision. Except for special circumstances described in CEQ regulations at 40 CFR 1506.10(d), 1506.11, and 1502.9(c), a record of decision cannot be signed by the Responsible Official until 30 days after the final environmental impact statement is made available to the public by the Environmental Protection Agency. The final environmental impact statement and record of decision, if completed, is appended by reference to one or more appropriate stewardship registers.

(c) An environmental impact statement is normally required for the following implementing decisions:

(1) Adoption of one or more stewardship actions that guide or prescribe alternative uses of the Preserve upon which future stewardship actions will be based that may be significant as described in 40 CFR 1508.27. Examples of these implementing decisions include, but are not limited to, the adoption of goals, objectives, and performance requirements by the Board of Trustees for programs of:

(A) Long-term grazing for livestock over most or all of the Preserve;

(B) Long-term general public access and recreation over most or all of the Preserve; and

(C) Long-term active management of forests and forest-related products over most or all of the forested land within the Preserve.

(2) Construction and operation of a visitor center with associated public access to the Preserve; and

(3) Activities or groups of activities within one or more stewardship actions that are anticipated to create outcomes that may be significant as described in 40 CFR 1508.27. Examples include, but are not limited to, an implementing decision by the Responsible Official for activities and groups of activities associated with the implementation of:

(A) Long-term grazing for livestock over most or all of the Preserve;

(B) Long-term general public access and recreation over most or all of the Preserve; and

(C) Long-term active management of forests and forest-related products over most or all of the forested land within the Preserve.

101.52 Environmental Assessment.

(a) An environmental assessment is prepared by the Responsible Official to aid in determining whether to prepare an environmental impact statement, to prepare a finding of no significant impact, to otherwise aid compliance with NEPA, or to facilitate preparation of an environmental impact statement when one is necessary.

(b) The environmental assessment of one or more stewardship actions is combined with one or more relevant stewardship registers to create a concise document or set of documents that describe one or more stewardship actions and alternatives that meet the identified purpose and need. The environmental analysis of the proposed stewardship action and alternatives is appended to or integrated with one or more stewardship registers (40 CFR 1506.4).

(c) The purpose of the appended or integrated information is to study, develop, and describe appropriate alternatives to recommended courses of action in any proposal, which involves unresolved conflicts concerning alternative uses of available resources.

(d) The combined document includes a brief discussion of the purpose and need for the proposal, of alternatives, of the environmental impacts of the proposal and alternatives, and a listing of agencies and persons consulted.

(e) The following stewardship actions within the Preserve and authorized by the Responsible Official in an implementing decision are normally accompanied by an environmental assessment:

(1) Establishing or substantively revising a program or policy for the permitting of seasonal or short-term backcountry recreation or special use

actions which could potentially result in greater than incidental ground disturbing activities;

(2) Establishing an integrated program of scientific investigations utilizing land, resources, and facilities of the Preserve where the effects of performing the investigations within the Preserve are anticipated to be short-term and minor in scope;

(3) Livestock management actions utilizing land, resources, and facilities of the Preserve, defined in location and time, the effects of which are anticipated to be short-term and minor in scope.

(4) Forest treatments, which may include the removal of trees or managed fire, designed to establish or enhance stand characteristic trends toward or into an historic range of variability affecting a clearly defined segment of the forested land or a specified forest type within the Preserve; and

(5) Reconstruction, repair, and use of roadways and trails, and construction of minor trail segments within the Preserve which are not anticipated to significantly alter the magnitude and frequency of anticipated use.

101.53 Finding of No Significant Impact.

(a) If, based on the information in the combined document (101.52(d)), the Responsible Official determines that the environmental consequences of the proposal will not have a significant effect on the human environment, the finding and reasons for it must be stated in a finding of no significant impact (FONSI).

(b) A FONSI is combined with the stewardship register and environmental assessment. If such a finding cannot be made, or it is otherwise desirable, the Responsible Official may cancel, modify, or postpone the proposal while additional information is made available, or issue a notice of intent that an environmental impact statement will be prepared and considered.

(c) The FONSI itself need not be detailed, but must succinctly state the reason for deciding that the action will have no significant environmental effects, and, if relevant, must show which factors were weighted most heavily in the determination. In addition to this statement, the FONSI must include or attach and incorporate by reference, the environmental assessment.

(d) The Responsible Official may seek public review of a FONSI before making an implementing decision. In some circumstances, the Responsible Official must make the FONSI available for public review (including state and area-wide clearinghouses) for 30 days before the Responsible Official makes a final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(1) The proposed action is, or is closely similar to, one, which normally requires the preparation of an environmental impact statement under the Trust's procedures; or

(2) The nature of the proposed action is one without precedent.

(e) The Responsible Official must use the factors of ''significantly'' as described in 40 CFR 1508.27 for the determination that a proposal will have no significant impact on the human environment.

101.6 Categorical Exclusions.

The Responsible Official may undertake the following stewardship actions, in the absence of extraordinary circumstances, without preparation of an environmental document:

(a) Policy development, planning and implementation which relate to routine activities, such as personnel, organizational changes, record management, internal communications, financial management, or similar administrative functions;

(b) Orders issued to provide short-term resource protection or to protect public health and safety;

(c) Location and maintenance of landline boundaries and geographic sites;

(d) Routine repair and maintenance of facilities and administrative sites including, but not limited to, buildings, fences, water systems, roads, trails, signs, and ancillary facilities associated with the administration and management of the Preserve, or the installation, routine repair and maintenance of a removable communication facility of not more than 250 square feet, the primary purpose of which is to facilitate communication associated with the administration and management of the Preserve;

(e) Use and care for horses or other stock for administrative purposes that are clearly limited in context and intensity;

(f) Repair and maintenance of recreation sites;

(g) Reconstruction or maintenance of utilities within a designated corridor;

(h) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(i) Implementation or modification of minor management practices to improve range conditions and/or animal distribution;

(j) Treatment of forest structure and fuel conditions for the purpose of reducing the hazard of large, stand-replacing crown fires in areas where such high severity fires are outside an historic range of variability. Projects under this category are limited to an aggregate area of no more than 640 acres in a calendar year, and may involve prescribed fire and/or the cutting of live trees, the diameter of which will be:

(1) No larger than nine inches diameter at breast height; or

(2) Determined by publicly available site-specific size class information used to define an appropriate diameter and basal area distribution of trees to be removed;

(k) Removal of brush or hazard trees near roads or buildings, where such action is necessary to protect historic structures or the health and safety of the public and/or employees, and when such action is clearly limited in context and intensity; and

(l) Permitting of seasonal or short-term backcountry recreation or special use actions that do not result in more than incidental ground disturbing activities.

101.7 Public Involvement.

(a) Opportunities for the public to provide input and maintain a dialogue with the Trust regarding a proposed stewardship action may be triggered by a combination of notice through appropriate media, public meetings, targeted outreach, agency consultation, scoping, and public review of relevant documents.

(b) In the preparation of a stewardship register, the Trust will identify the appropriate stages during the process leading up to a decision, and if the decision is to go forward with an action, the implementation of that decision, where specific forms of public review and input will be most useful and informative to the Responsible Official.

(1) For stewardship actions involving natural and cultural resources on the Preserve, the Responsible Official will notify the public that the stewardship action is being proposed, and that a stewardship register is available for review.

(2) The Trust will take into account public input received at this stage of the proposal to help determine the appropriate goals, objectives, and performance requirements that will guide further development of the proposed stewardship action.

(c) The public's reaction to a proposed stewardship action will be critical in planning for the appropriate level of public involvement throughout the rest of the NEPA process. The public's reaction will also help determine the

extent to which the Trust develops alternatives to the proposed action.

(d) All proposed stewardship actions involving the management of the lands, resources, and facilities of the Preserve will require authorization by the Board of Trustees at a public meeting, during which public comments will be considered and recorded.

(e) The Trust will provide a reasonable time period for public review and comment upon the completion of an environmental assessment, unless the Responsible Official determines that:

(1) Emergency circumstances exist requiring immediate implementation of the proposed action; or

(2) Based on public input earlier in the process, the level of public interest does not warrant a comment period.

101.8 Making and Recording an Implementing Decision.

(a) The Responsible Official may make an implementing decision to authorize a stewardship action after completion of 101.5, if and only if:

(1) The available information regarding the purpose and need for the proposal and the anticipated outcomes are suitable; and

(2) At least one monitored outcome is identified in the stewardship register.

(b) The implementing decision must be recorded in the stewardship register by signature of the Responsible Official and dated.

(c) After an implementing decision for one or more stewardship actions is made, minor corrections or adjustments to the stewardship action to improve efficiency, correct minor errors, or otherwise improve performance may be made by the responsible Trust staff, if and only if:

(1) The corrections or adjustments do not significantly alter the nature or extent of the stewardship action or its goals, objectives, or performance requirements;

(2) The anticipated consequences of the stewardship action remain essentially the same as those described in the relevant environmental documents; and

(3) Such minor corrections or adjustments are recorded in the appropriate stewardship register as described in 101.4(c).

101.9 Monitoring Outcomes and Considering New Information.

(a) The Responsible Official must evaluate each monitored outcome identified in the stewardship register. As information from monitoring is obtained and interpreted, conclusions are to be recorded in the appropriate stewardship register by the responsible Trust staff.

(b) If, based on monitoring conclusions or other new information available to the Responsible Official, the observed outcomes of stewardship actions described in one or more stewardship registers as amended and/or appended differ significantly from those anticipated or if new information has a meaningful bearing on the anticipated consequences of one or more stewardship actions, the Responsible Official must consider such information and:

(1) Consider the preparation or supplementation of an environmental document as described in 101.5 and CEQ regulations;

(2) If appropriate, propose a stewardship action and/or continue, modify, or terminate one or more stewardship actions as described in 101.4; and

(3) Appropriately, amend and/or append the stewardship register to incorporate the new information and/or change to the stewardship action or description of consequences in the relevant appended environmental document.

101.10 Preparing and Approving the Comprehensive Management Program.

(a) The comprehensive management program summarizes monitored outcomes, describes past and ongoing stewardship actions of the Preserve, and displays the strategic guidance for the Preserve adopted by the Board of Trustees. The comprehensive management program provides a basis for determining the cumulative effects of the management of the Preserve and provides convenient public communication of accomplishments and desired outcomes.

(b) A comprehensive management program must be prepared by the Responsible Official two years after the Trust assumes management responsibility of the Preserve, thereafter, it must be reviewed and appropriately updated at least once every five years or when appropriate as determined by the Board of Trustees.

(c) Upon completion by the Responsible Official, the comprehensive management program must be reviewed and approved by the Board of Trustees or returned to the Responsible Official for additional preparation.

Exhibit I— Stewardship Register

Descriptive name of Stewardship Action:

File Number:

Target Start Date:

Actual Start Date:

Target Completion Date:

Actual Completion Date:

Location: Identify the location of the stewardship action in the Preserve in a readily accessible and understandable form.

Purpose and Need: Concisely explain why the stewardship action is proposed.

Description: Describe the stewardship action and, through appropriate media, describe the related physical, biological, social, and/or economic environment.

Goal: Identify the goal(s) sought by adoption or implementation of the stewardship action.

Objective: Describe the desired outcome of the stewardship action in measurable terms including, but not limited to, anticipated quantity, location, and timing.

Performance Requirements: List the performance requirements needed to guide or limit resource use in accomplishment of the objective. A checklist may be used.

Append Environmental Document, if applicable.

Agencies and Persons Consulted:

Signature of Responsible Official

Date Authorized

Monitored Outcomes: List one or more outcomes that will be meaningfully evaluated after implementation of the stewardship action. Describe the nature, size, and location of each monitored outcome anticipated to occur in the short-, mid-, and/or long-term.

Evaluation of Monitoring Information: As information from monitoring is evaluated, describe conclusions and any new information as guided by 101.7(b).

Dated: February 5, 2003.

William deBuys,

Chairman, Valles Caldera Trust.

[FR Doc. 03–3325 Filed 2–10–03; 8:45 am]

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Federal Register

Tuesday,
February 11, 2003

Part II

Department of Veterans Affairs

38 CFR Parts 3 and 4
Schedule for Rating Disabilities; the Musculoskeletal System; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900–AE91

Schedule for Rating Disabilities; the Musculoskeletal System

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend that portion of its Schedule for Rating Disabilities that addresses musculoskeletal conditions. The intended effect is to update this portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review. We also propose to make nonsubstantive editorial changes throughout this portion of the Schedule.

DATES: Comments must be received on or before April 14, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulatory Law (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AE91.'' All comments received will be available for public inspection in the Office of Regulatory Law, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: As part of its first comprehensive review of the rating schedule since 1945, VA published in the **Federal Register** of December 28, 1990 (55 FR 53315), an advance notice of proposed rulemaking advising the public that it was preparing to revise and update the portion of VA's Schedule for Rating Disabilities (the rating schedule) that addresses the musculoskeletal system. On June 3, 1997, we published in the **Federal Register** a final rule (62 FR 303235) revising § 4.73, which addresses muscle injuries. This proposed rule addresses the remainder of the musculoskeletal system, § 4.71a, which addresses primarily bone and joint disabilities. In the document revising § 4.73, we stated our intent to designate the remainder of the musculoskeletal system as the orthopedic system. However, because some of the provisions of § 4.71a also apply to muscle injuries, and some of the conditions are rheumatologic, rather than orthopedic, conditions, we now propose to retain the current designation, musculoskeletal system.

In response to the advance notice of proposed rulemaking, we received two comments, one from the American Legion and one from a physician in the Department of Orthopedics at the University of Washington.

One commenter recommended that this revision include revisions of the rating and examination guidelines in 38 CFR 4.40 to 4.70 as they relate to musculoskeletal disabilities. We are proposing to make many changes to these sections, and they are discussed in detail below.

The same commenter stated that the current rating schedule does not reflect the use of new diagnostic methods, such as computed tomography (CT) and magnetic resonance imaging (MRI) scans, or reflect new operative procedures for joint replacements. We agree that the schedule is outdated in these areas and propose changes to update the schedule for many disabilities. For example, we propose to accept not only X-ray findings, but also reports from other imaging procedures (such as MRI or CT scans), as evidence of arthritis and other musculoskeletal conditions.

The commenter also recommended that there be a review of the Veterans Health Administration's ''Physician's Guide for Disability Evaluation Examinations'' (a manual no longer in use that gave guidance to examining physicians who do compensation and pension examinations). The commenter felt that medical advances present an increased need for the examiner to provide specific findings and detailed measurement and assessment of disabling conditions. This comment is no longer pertinent because the former ''Physician's Guide'' is no longer in existence. (A new Clinician's Guide or handbook for examiners is, however, under development.) In place of the former Physician's Guide, VA developed a series of disability examination worksheets for various individual conditions or groups of conditions to assure that examiners provide all information necessary for rating. These worksheets, which are periodically updated as medical advances or rating needs arise, are now in use.

A second commenter provided a set of guidelines for evaluating spine disabilities. We are revising certain parts of the current musculoskeletal portion of the rating schedule separately. These include ankylosis and limitation of motion of the digits of the hand, disabilities of the spine, and intervertebral disc syndrome (published as a proposed rule in the **Federal Register** of February 24, 1997 (62 FR 8204)). Since these disabilities are not included in this proposed rule, this comment concerning the evaluation of spine disabilities will be addressed in the separate proposed rule providing criteria for evaluating disabilities of the spine.

In addition to publishing an advance notice, we also hired an outside contract consultant to recommend changes to the evaluation criteria to ensure that the schedule uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review. The consultant convened a panel of non-VA specialists to review the portion of the rating schedule dealing with the musculoskeletal system in order to formulate recommendations. We are proposing to adopt many, although not all, of the recommendations the contractor submitted. In some cases, evaluations based on the revised criteria will be lower, in some cases, higher, and, in some cases, unchanged.

Sections 4.40 through 4.46, 4.57 through 4.59, 4.61 through 4.64, and .66 through 4.71 in subpart B of 38 CFR part 4 deal with a variety of issues, including circulatory disturbances, osteomyelitis, loss of use of both buttocks, painful motion, foot deformities, dominant hand, and examination and assessment of the bones and joints. Much of the information in these sections was originally included in rating schedules of 1925, 1933 or 1945 to provide background medical information that was not otherwise available. We propose to consolidate and reorganize these sections and to delete the parts that are simply statements of medical fact rather than substantive rules of general applicability, statements of general policy, or interpretations of general applicability that raters must follow. A regulation is an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy, or to describe the procedure or practice requirements of an agency (5 U.S.C. 551(4)). General medical information that is available in standard textbooks and other material that neither prescribes VA policy nor

establishes procedures a rater must follow fall outside of those parameters, and are therefore not appropriate in a regulation. We propose to retain, with editorial and sometimes substantive changes, §§ 4.40, 4.42, 4.45, 4.46, 4.59, 4.67, 4.68, 4.69, 4.71, and 4.71a. We propose to delete §§ 4.41, 4.43, 4.44, 4.57, 4.58, 4.61, 4.62, 4.63, 4.64, 4.66, and 4.70. The proposed changes are explained in detail below.

In addition, we are proposing to make a number of editorial changes throughout this portion of the rating schedule to condense and clarify the schedule in the interests of efficiency, ease of use, and elimination of ambiguity.

Introductory §§ 4.40 through 4.45 are directed in part at examiners and in part at raters. Much of the material is medical information, some of it outdated, about musculoskeletal diseases. We propose to remove the nonregulatory material, that is, material that does not prescribe VA policy or establish procedures a rater must follow, and the material directed toward examiners because this material is not appropriate in a regulation.

Section 4.40, currently titled ''Functional loss,'' describes disability of the musculoskeletal system as primarily the inability, due to damage or infection in parts of the system, to perform the normal working movements of the body with normal excursion, strength, speed, coordination and endurance. It states that it is essential that the examination on which ratings are based adequately portray the anatomical damage and functional loss with respect to all of these elements. It also states that weakness is as important as limitation of motion, and that a part that becomes painful on use must be regarded as seriously disabled. The intent of this section appears to be to provide a general description of musculoskeletal disability and guidelines to examination rather than a specific method for evaluating these functions in musculoskeletal disabilities. As discussed above, there are disability examination worksheets that provide examiners with detailed requirements for musculoskeletal examinations. The current criteria for musculoskeletal diseases do not always call for a rating commensurate with ''serious'' disability when there is pain on use of a joint. (*See,* for example, fibromyalgia, diagnostic code 5025 in § 4.71a, a condition that, by definition, includes widespread musculoskeletal pain, and flatfoot, diagnostic code 5276.) Pain is, in fact, almost the hallmark of musculoskeletal disease. We therefore propose to revise § 4.59, to be titled ''Evaluation of pain in musculoskeletal conditions,'' and to provide criteria for the evaluation of pain, if appropriate, when pain is not taken into account in the evaluation criteria for a particular condition. Although pain is a subjective complaint, the more severe it is, the more likely there are to be correlative physical or laboratory findings, and this fact is the basis of the criteria in § 4.59.

Of the other characteristics of musculoskeletal disability listed in § 4.40—impairment of normal excursion, strength, speed, endurance, and coordination—speed and endurance are not readily measurable in the setting of a medical examination, and there is no method of evaluating them consistently. They are therefore less useful than limitation of motion as measures of the extent of disability. Coordination is an issue in only a limited number of musculoskeletal conditions, being seen more often in neurological conditions, and is unlikely to occur due to musculoskeletal disorders in the absence of other findings, such as weakness, atrophy, or limitation of motion. In summary, the information in § 4.40 does not prescribe VA policy or establish clear procedures a rater must follow. It is therefore not appropriate in a regulation, and we propose to delete it.

We propose to retitle § 4.40 ''Evaluation of musculoskeletal disabilities'' and to state that, except for application of the pain scale in § 4.59 when appropriate, the evaluation criteria provided under the diagnostic codes are to be the sole basis of evaluation. Factors such as fatigability and impairment of coordination, speed, and endurance, are common in musculoskeletal disabilities, and § 4.40 would state that disability due to those functions is encompassed by the evaluation criteria that are provided. An evaluation based on one of these factors over and above what is called for under the evaluation criteria will therefore not be assigned. This change would eliminate the need to assess functions that cannot be consistently or readily assessed and would therefore promote consistency of evaluations in musculoskeletal conditions. To promote consistency in assessing muscle strength, we propose to address the evaluation of muscle strength in § 4.46.

Because § 4.41, ''History of injury,'' is a restatement of parts of §§ 4.1, 4.2, 4.6, and 4.9, we propose to delete it.

Section 4.42, ''Complete medical examination of injury cases,'' discusses the importance of a complete initial examination, rephrasing basic rating principles that are stated in 38 CFR 4.1 and 4.2 and reflected in the examination worksheets. This material is therefore redundant, and we propose to delete it.

We propose to retitle § 4.42 ''Examination of joints''. It would state that the range of motion of a joint will be determined by measurement with a goniometer and indicate that, for VA rating purposes, the normal ranges of motion for major joints and the spine are provided on plates in § 4.71a.

Current § 4.43, ''Osteomyelitis,'' outlines the principles of evaluating osteomyelitis. It states that osteomyelitis will be regarded as a continuously disabling process and will be entitled to a permanent rating unless the affected part is removed by amputation. This information is not consistent with modern medical knowledge; osteomyelitis can often be treated and cured without resort to amputation, and continuous disability is not always the aftermath. We are proposing revised guidelines for the evaluation of osteomyelitis under diagnostic code 5000 that we believe are clear and comprehensive enough to require no additional guidelines. The proposed criteria are also based on contemporary medical knowledge. We therefore propose to delete this section.

Current § 4.44, ''The bones,'' states that osseous abnormalities due to injury or disease should be depicted by study and observation of all available data from time of injury, through treatment, convalescence, progress of recovery, and permanent residuals. It also discusses the effect of angulation and deformity of bone, including the effect on other joints, which are medical facts or judgment. Sections 4.2 and 4.6 regulate interpretation of examination reports and the evaluation of evidence which § 4.44 attempts to restate. Since § 4.44 does not prescribe VA policy or establish procedures a rater must follow, is redundant with §§ 4.2 and 4.6, and is not based on current medical knowledge, we propose to delete it.

Section 4.45, ''The joints,'' lists some of the functional effects of joint disability, including whether there is less movement than normal, more movement than normal, weakened movement, excess fatigability, incoordination, impaired ability to execute skilled movements smoothly, pain on movement, swelling, deformity, or atrophy of disuse, but does not address how to evaluate them. Since modern information about joint disability is available from numerous medical sources, and this portion of the section does not prescribe VA policy or establish procedures a rater must follow, we propose to delete this material. We propose to provide clear criteria for

evaluating specific conditions affecting joints under specific diagnostic codes and in § 4.59, as discussed later in this document.

Section 4.45 also defines major and minor joints and their rating significance. It states that for the purpose of rating disability from arthritis, the shoulder, elbow, wrist, hip, knee, and ankle are considered major joints, and that multiple involvements of the interphalangeal, metacarpal, and carpal joints of the upper extremities, the interphalangeal, metatarsal and tarsal joints of the lower extremities, the cervical vertebrae, the dorsal vertebrae, and the lumbar vertebrae, are considered groups of minor joints, ratable on a parity with major joints. It also states that the lumbosacral articulation and both sacroiliac joints are considered to be a group of minor joints, ratable on disturbance of lumbar spine functions.

Since this information is necessary for rating, we propose to retain regulatory definitions of major and minor joints for purposes of evaluating arthritis, but to revise them for clarity. We propose to retitle this section ''Major and Minor Joints for Arthritis Evaluations,'' which better describes the content. We propose to include two paragraphs, with paragraph (a) (Major joints) stating that for purposes of rating disability from arthritis, each shoulder, elbow, wrist, hip, knee and ankle joint is a major joint, and all other joints are minor joints. Paragraph (b) (Groups of minor joints) would state that a group of minor joints with arthritis will be rated as a major joint. A group of minor joints is defined as any combination of three or more interphalangeal or metacarpo-phalangeal joints of a single hand, any combination of three or more interphalangeal, metatarso-phalangeal, tarso-metatarsal, or tarso-tarsal (or intertarsal) joints of a single foot; any combination of two or more cervical vertebral joints; any combination of two or more thoracolumbar vertebral joints; or a combination of the lumbosacral joint and both sacroiliac joints. This revision would resolve ambiguity in the current language by clearly indicating, for example, that the combination of minor joints in different parts of the body, such as two interphalangeal joints of one hand and a single cervical or thoracolumbar intervertebral joint, does not constitute a major joint and that the combination of one interphalangeal, one metatarso-phalangeal, and one intertarsal joint of a single foot would constitute a group of minor joints. These issues have been a source of confusion in applying the current schedule. This revision would also remove the vague term ''multiple involvements'' and specify the number of minor joints in various areas that would constitute a group of minor joints. The revision would also name specific joints, rather than naming bones, in order to eliminate confusion about determining, for example, whether or not the term ''carpal joints'' includes the radiocarpal joint (between the radius and the carpal bones) the carpo-carpal (or intercarpal) joints (between two or more carpal bones), and the carpo-metacarpal joints (between the carpals and the metacarpals). Since all of these joints are involved in wrist motion, we propose to consider them all part of the wrist joint, and therefore part of a major joint.

Section 4.46, ''Accurate Measurement,'' points out the importance of accurate measurements of the length of stumps, excursion of joints, and dimensions and locations of scars with respect to landmarks, in the disability examination process. It also states that a goniometer is indispensable in measuring limitation of motion. The importance of an adequate examination, which this section attempts to set forth, is already stated in § 4.2, ''Interpretation of examination reports''. Disability examination worksheets for examiners give detailed guidelines for examining and measuring in the musculoskeletal system. We propose to put the requirement for use of a goniometer to measure joint range of motion in revised § 4.42. We therefore propose to delete the contents of § 4.46 because the material is redundant.

We propose to retitle § 4.46, ''Evaluation of muscle strength,'' and to state that, for VA rating purposes, muscle strength or weakness will be evaluated using a standard muscle grading table that is provided in paragraph (a). This will assure that assessment of muscle strength will be consistent and based on the system recommended by the consultants as the system used most widely by orthopedic surgeons, neurologists, physiatrists, and physical therapists. This system uses six levels of muscle grading: Absent (0): No palpable or visible muscle contraction; Trace (1): Palpable or visible muscle contraction, but muscle produces no movement, even with gravity eliminated; Poor strength (2): Muscle produces movement only when gravity is eliminated; Fair strength (3): Muscle produces movement against gravity but not against any added resistance; Good strength (4): Muscle produces movement against some, but no more than moderate, resistance; and Normal strength (5): Muscle produces movement against full or ''normal'' resistance. This system is derived from ''Aids to the Investigation of the Peripheral Nervous System,'' published by the Medical Research Council of Great Britain in 1945. The consultants pointed out that, although it is largely subjective, it has some objectivity in measuring strength by using gravity resistance in the assessment, and the term ''normal'' resistance is generally understood in medical usage. This table can be used for assessing both muscle and (motor) nerve disability. For convenience of use in assessing both musculoskeletal and neurologic disabilities, we also plan to add the table to the neurologic portion of the rating schedule when it is revised. We propose to add a second paragraph to § 4.46 to provide a guide to the use of the results of the muscle grading system in assessing loss of muscle function, as follows: complete, no motor function (muscle grading system 1 or 0); incomplete, severe, marked weakness associated with muscle atrophy (muscle grading system 2); incomplete, moderate, weakness (muscle grading system 3); and incomplete, mild, weakness (muscle grading system 4). In our judgment, this material would assist raters in making consistent determinations of muscle strength or weakness, based on the muscle grading system, and it is in general accord with the recommendations of the consultants.

Section 4.57, ''Static foot deformities,'' discusses in detail how to clinically differentiate flatfoot (pes planus) that is congenital from flatfoot that is acquired and discusses when flatfoot should be service-connected. Material that pertains more to a determination of service connection than to evaluation is not appropriate in the rating schedule, which is a guide to the evaluation of disabilities, and we propose to delete this material. Section 4.57 also states that in the absence of trauma or other definite evidence of aggravation, service connection is not in order for pes cavus, a foot deformity that is typically a congenital or juvenile disease. Differentiating congenital from acquired foot deformities is more of a medical determination than a rating determination. None of the information in this section is pertinent to how raters should evaluate flatfeet or pes cavus, and we therefore propose to delete this section.

Current § 4.58, ''Arthritis due to strain'' discusses when it is appropriate to service connect, on a secondary basis, arthritis of joints that are subject to direct strain when there has been amputation or shortening of a lower extremity, or amputation or injury of an upper extremity. This material also

addresses the issue of service connection rather than evaluation. In addition, the determination of whether arthritis in a particular joint is secondary to another condition often requires a medical opinion. Since this material is not a guide to evaluation, and therefore is not appropriate in the rating schedule, and in addition is more of a medical than an adjudicatory decision, we propose to delete this section.

Current § 4.59, ''Painful motion,'' states that painful motion is an important factor of disability and that the intent of the schedule is to recognize painful motion with joint or periarticular pathology as productive of disability. It states that painful, unstable, or malaligned joints are entitled to at least the minimum compensable rating for the joint, and indicates how joints should be tested. However, the instructions for evaluating pain are ambiguous and subject to individual interpretation, for example, in that they direct the examiner to note facial expression, wincing, etc., on pressure or manipulation. Furthermore, the current rating schedule does not always follow these guidelines. For example, a zero-percent evaluation is assigned for lumbosacral strain (under diagnostic code 5295) when there are slight subjective symptoms (which would almost always include pain); for degenerative arthritis (under diagnostic code 5003) when there is limitation of motion due to pain unless there is objective confirmation; and for a fracture of the humerus (under diagnostic code 5202) when there is malunion that is less than moderate. The instructions also fail to provide a way for raters to assign higher evaluations for extreme pain, which can be totally disabling in some cases. We propose to delete the current information in this section because it does not provide clear and objective instructions to raters on how to assess pain nor does it indicate how pain due to musculoskeletal conditions other than joint disability should be assessed. This follows the recommendation of the consultants, who felt that the additional disability resulting from pain may not be adequately considered in the current schedule and that we may wish to include more information on the evaluation of pain. They did not make specific recommendations about how to do this. Based in part on consultation with a committee of orthopedic surgeons from the Veterans Health Administration (the VHA Orthopedic Committee), we propose to change the name of this section to ''Evaluation of pain in musculoskeletal conditions'' in order to clarify the scope of the section and propose a specific set of criteria to be used for the evaluation of pain in these conditions. We propose that when the evaluation criteria for a condition listed in § 4.71a do not take pain into account, but pain is present, that raters combine an evaluation based on the criteria under the particular diagnostic code with an evaluation for pain under § 4.59. A single (combined) evaluation for the condition would then be assigned under the appropriate diagnostic code for the condition.

We propose to provide a wide range of evaluations for pain in § 4.59, with 100-;, 30-, 20-, 10-, and zero-percent evaluation levels. The evaluation criteria are based on a combination of the degree of the subjective complaint of pain, which is largely unmeasurable, and associated correlative clinical or laboratory findings that are more objective. We propose that a 100-percent evaluation for pain be assigned when there is complaint of pain that globally interferes with and severely limits daily activities, as long as the requirements for a 30-percent evaluation for pain are met, and a psychiatric evaluation has excluded other processes to account for the pain. We propose that a 30-percent evaluation for pain be assigned when there is complaint of pain at rest, with pain on minimal palpation or on attempted range of motion on physical examination, plus X-ray or other imaging abnormalities, plus abnormal findings on a vascular or neurologic special study. We propose that a 20-percent evaluation for pain be assigned when there is complaint of pain on any use, with pain on palpation and through at least one-half of the range of motion on physical examination, plus X-ray or other imaging abnormalities. We propose that a 10-percent evaluation for pain be assigned when there is complaint of pain on performing some daily activities, with pain on motion (through any part of the range of motion) on physical examination, plus X-ray or other imaging abnormalities. We propose that a zero-percent evaluation for pain be assigned when there is complaint of mild or transient pain on performing some daily activities, with correlative finding(s) on physical examination (for example, pain on palpation or pain on stressing the joint), but without X-ray or other imaging abnormalities. Establishing these criteria for pain evaluation would assure that pain is taken into consideration in all cases where it is present, either under the criteria in § 4.59 or in the criteria under the diagnostic code specific to the condition (if pain is part of those criteria). By linking the complaints of pain with objective findings, it will promote the consistent evaluation of pain. It would also provide a 100-percent level of evaluation for pain that severely limits all daily activities, an effect that is not addressed in the current rating schedule.

We also propose to add two notes to § 4.59. The first would direct that a rater not combine a 100-percent evaluation under this section with any other evaluation for the same condition. The second would state that the provisions of § 4.68, ''Limitation of combined evaluation of musculoskeletal and neurologic disabilities of an extremity,'' will apply to the evaluation of conditions evaluated wholly or partly under § 4.59, except for a 100-percent evaluation, that is, this will allow assignment of a 100-percent evaluation based on pain even if it would exceed the limits of an evaluation under the provisions of § 4.68 (Limitation of combined evaluation of musculoskeletal and associated neurologic disabilities of an extremity).

This set of criteria would replace all the current material in § 4.59, which we propose to delete.

Current § 4.61, ''Examination,'' discusses the need for a thorough examination of all major joints, including the need to examine Haygarth's and Heberdon's nodes, in order to properly evaluate a claimant's disability due to arthritis. However, the presence or absence of these nodes has no bearing on evaluation. Furthermore, the term ''Haygarth's nodes,'' which means a swelling of joints related to rheumatoid arthritis, is no longer in common medical use. The examiner determines the type of arthritis that is present based on many factors, such as which joints are affected, the history, laboratory and imaging studies, physical findings, etc. Guidance for examiners in providing information sufficient to allow raters to evaluate joint disease is contained in disability examination worksheets. Since the material in this section is not pertinent to the evaluation of arthritis, is outdated, and is similar to material in §§ 4.1 and 4.2, we propose to delete it.

Current § 4.62, ''Circulatory disturbances,'' reminds the rater not to overlook circulatory disturbances, especially of the lower extremity following injury to the popliteal space, and to rate them generally as phlebitis. Medical records should make it clear when a vascular injury is associated with a lower extremity injury. Evaluation will depend on the findings

on examination in the particular case. In our judgment, this section is unnecessary because it does not prescribe VA policy nor establish procedures a rater must follow, and we propose to delete it.

Current § 4.63, ''Loss of use of hand or foot,'' and § 4.64, ''Loss of use of both buttocks,'' are duplicates of 38 CFR 3.350(a)(2) and 3.350(a)(3), portions of VA's adjudication regulations that implement statutory requirements for entitlement to special monthly compensation (SMC). Since this material addresses requirements for SMC rather than evaluating disabilities, it is not appropriate in part 4, and we propose to delete it.

Current § 4.66, ''Sacroiliac joint,'' describes disability of the sacroiliac joints. For example, it describes the clinical findings of sacroiliac joint disability, the X-ray findings of arthritis of the sacroiliac joints, and other material more pertinent to examiners than to raters. This medical information neither prescribes VA policy nor establishes procedures a rater must follow, and we propose to delete it. The section also includes a direction to consider the lumbosacral and sacroiliac joints as one anatomical segment. Section 4.45(b) states that the lumbosacral articulation and both sacroiliac joints are to be rated together as a group of minor joints. The § 4.45 statement is a clearer explanation of the relationship of these joints than the statement in § 4.66, and is more pertinent to the needs of raters. We therefore propose to delete all of § 4.66.

Section 4.67, ''Pelvic bones'' directs that pelvic bone fractures be evaluated based on faulty posture, limitation of motion, muscle injury, painful motion of the lumbar spine manifest by muscle spasm, mild to moderate sciatic neuritis, peripheral nerve injury, or limitation of hip motion. We propose to revise the title to more clearly indicate the subject matter of the section by changing it to ''Pelvic bone fractures.'' We also propose to provide clearer and more succinct instructions on evaluation by directing that pelvic fractures be evaluated based on the specific residuals, such as ''limitation of motion of the spine or hip, muscle injury, or sciatic or other peripheral nerve neuropathy.''

Current § 4.68, ''Amputation rule,'' states that the combined rating for disabilities of an extremity will not exceed the rating for the amputation at the elective level, were amputation to be performed. Although this section is included in the musculoskeletal subdivision of the rating schedule, there has been confusion about whether it applies to disabilities of body systems other than the musculoskeletal system that might affect the extremities, such as the neurologic, skin, and cardiovascular systems. Therefore, we propose to revise it to clarify that the amputation rule applies to only musculoskeletal and associated neurological disabilities of an extremity. There are several nonmusculoskeletal disabilities of an extremity in the current rating schedule that can be evaluated at a level higher than an amputation at a comparable level would be evaluated. For example, in § 4.104 in the cardiovascular section of the rating schedule, arteriosclerosis obliterans (diagnostic code 7114), thrombo-angiitis obliterans (diagnostic code 7115), varicose veins (diagnostic code 7120), and post-phlebitic syndrome (diagnostic code 7121) can all be evaluated at percentages that could exceed the percentage evaluation for amputation. Arteriosclerosis obliterans of a single lower extremity can be evaluated at 100 percent if there is ischemic limb pain at rest and either deep ischemic ulcers or an ankle/brachial index of 0.4 or less. There is no requirement that the arteriosclerosis obliterans affect a particular extent of a lower extremity for this evaluation to apply. Therefore, a 100-percent evaluation could be assigned when only the lower two-thirds of the extremity is affected, although an amputation of the extremity through even the upper one-third of the thigh warrants only an 80-percent evaluation. Section 4.68 currently states that painful neuroma of a stump after amputation shall be assigned the evaluation for the elective site of reamputation. This represents an exception to the rule based on the presence of a neurologic condition. In view of these facts, plus the fact that the amputation rule is located in the musculoskeletal system portion of subpart B (Disability Ratings) of the rating schedule rather than in subpart A, which addresses general rating policies, VA originally intended this rule to apply only to musculoskeletal disabilities. Injuries of an extremity may involve muscles, nerves, ligaments, joints, etc. The effects of these injuries are commonly inseparable. Nerve injuries, for example, may affect muscle strength and motion and produce effects almost identical to those of a muscle injury in the same area. We intend the rule to assure that the evaluation of the combined effects of even a severe musculoskeletal injury (including neurologic damage) will not exceed the evaluation for amputation, because, in general, all of these problems would be superseded or removed if an amputation were to be performed. However, § 4.68 does not limit evaluations for the cardiovascular conditions mentioned above, nor would it be reasonable for it to do so, since an amputation might not ''cure'' or remove the disability. We therefore propose to clarify this section by stating that the combined rating for musculoskeletal and neurologic disabilities of an extremity will not exceed the rating that would be assigned for an amputation of the extremity at the level that would remove the affected areas, unless the evaluation criteria for a particular disability allow a higher evaluation. We also propose to revise the title of this section for further clarity to ''Limitation of combined evaluation of musculoskeletal and associated neurologic disabilities of an extremity.'' We propose to retain, but edit, the portion of the current section pertaining to a painful stump neuroma that develops following amputation.

Current § 4.69, ''Dominant hand,'' was revised in 1997. The revision modernized the terms ''major'' and ''minor'' to ''dominant'' and ''nondominant,'' which are now the preferred terms. We propose only editorial changes in this section.

We propose to delete § 4.70, ''Inadequate Examinations,'' from this section of the schedule as redundant since its provisions are not limited to the musculoskeletal system and are similar to material in §§ 4.1 and 4.2, which apply to all VA disability examinations.

Section 4.71, ''Measurement of ankylosis and joint motion,'' explains Plates I and II in the schedule, which show standard anatomical positions of the joints of the upper and lower extremities and their ranges of motion. It also describes the exceptions to using the anatomical position as the zero baseline for joint measurement. The section also mentions Plate III, bones of the hand, and explains how to measure limitation of motion of the fingers, which is information provided in the part of the schedule that addresses the evaluation of ankylosis and limitation of motion of the fingers. We propose to delete the redundant reference to measurement of motion of the fingers, but propose no other substantive change to this section. We do propose to revise the title to ''Baseline for joint motion measurement.''

We propose to retain the illustrations currently in Plates I and II, demonstrating the normal range of motion of the upper and lower extremities. These plates are important for the evaluation of disabilities of the joints because they provide a

standardized description of joint measurements.

Current Plate III, showing bones of the hand, and current Plate IV, showing bones of the foot, are incomplete and outdated, so we propose to remove them and replace them with updated Plates III and IV.

We propose to add one additional plate to the musculoskeletal section of the rating schedule to illustrate range of motion of the cervical and dorsolumbar (thoracolumbar) spine (Plate V). This will be included with the separate regulation that would revise the portions of the musculoskeletal system that address disabilities of the spine.

In the current rating schedule, next to the percentage evaluations following diagnostic codes 5054, 5104 through 5130, 5160 through 5167, 5250, and 5275, superscripts are included directing that entitlement to special monthly compensation be considered. We are replacing the numbered superscript with asterisks that will refer to a single footnote containing similar information that will follow diagnostic code 5275, at the end of the area of the schedule that addresses shortening of the lower extremity, which is the last area of the musculoskeletal system in which special monthly compensation might be applicable. We propose to add a note at the beginning of § 4.71a, preceding the coded evaluations of disabilities, instructing raters to refer to § 3.350 whenever they rate an injury that has resulted in anatomical loss or loss of use of a limb. We believe that this will adequately notify the rater to ensure that there is a complete review for special monthly compensation. There is a footnote at diagnostic codes 5126 through 5130 indicating that entitlement to special monthly compensation is established if there is amputation of the thumb and any three fingers of a hand, since this is equivalent to the loss of use of one hand. This is not explicitly stated in § 3.350, which is the regulation that addresses special monthly compensation (SMC). However, it is not appropriate in part 4, because it addresses SMC rather than the evaluation of disabilities, and we therefore propose to remove this rule from part 4 and add it to 38 CFR 3.350.

Current table II, ''Ratings for multiple losses of extremities with dictator's rating code and 38 CFR citation,'' was prepared for use by raters when dictating a rating decision for transcription, but the codes are out of date. The updated codes, which are not regulatory, are located in Appendix A of VA's Adjudication Procedures Manual, M21–1. The codes are not needed for disability evaluation, and we therefore propose to delete Table II.

Osteomyelitis

The current evaluation criteria for osteomyelitis, diagnostic code 5000, provide ratings of 100 percent for osteomyelitis of the pelvis, vertebrae, or extending into major joints, or with multiple localization or with long history of intractability and debility, anemia, amyloid liver changes, or other continuous constitutional symptoms; 60 percent for frequent episodes, with constitutional symptoms; 30 percent if there is definite involucrum or sequestrum, with or without discharging sinus; 20 percent if there is a discharging sinus or other evidence of active infection within the past 5 years; and 10 percent if the infection is inactive, following repeated episodes, without evidence of active infection in past 5 years. There are also two complex notes under this diagnostic code.

The current evaluation criteria are complex and difficult to apply consistently, and do not reflect the effectiveness of modern treatment techniques, such as aggressive antibiotic therapy and microsurgery. Although the consultants suggested no major changes to the current criteria, we propose substantial revisions for the sake of clarity, ease of use, and consistency of evaluations. We propose to restructure the criteria based on which bone or bones are affected, whether the infection is active or inactive, whether or not there are debilitating complications (such as anemia, septicemia, or amyloidosis), and the number of recurrences, if any, within the past 5 years.

We propose to provide a 100-percent evaluation for chronic intractable osteomyelitis of any site when it is associated with debilitating complications such as anemia and amyloidosis. These criteria better define when chronic osteomyelitis is so disabling that it warrants a 100-percent evaluation. We also propose to evaluate osteomyelitis of the spine, pelvis, shoulder, elbow, wrist, hip, knee or ankle, or of two or more non-contiguous bones, when active or acute, with constitutional signs and symptoms, such as fever, fatigue, malaise, debility, and septicemia, at 100 percent. We propose to evaluate osteomyelitis at one of these sites that is inactive or chronic at 60 percent, if there were two or more recurrent episodes of active infection (following the initial infection) within the past 5 years; at 30 percent if there was one recurrent episode of active infection (following the initial infection) within the past 5 years; and at zero percent if there were no recurrent episodes of active infection within the past 5 years.

We propose to evaluate osteomyelitis that does not involve the spine, pelvis, shoulder, elbow, wrist, hip, knee or ankle, does not involve two or more non-contiguous bones, and does not involve only a finger or toe, at 40 percent if osteomyelitis is active or acute; at 30 percent if the infection is inactive or chronic, with two or more recurrent episodes of active infection (following the initial infection) within the past 5 years; at 20 percent if the infection is inactive or chronic and there was one recurrent episode of active infection (following the initial infection) within the past 5 years; and at zero percent if there were no recurrent episodes of active infection within the past 5 years.

We propose to evaluate osteomyelitis of a single finger or toe at 10 percent when the infection is active or acute, at 10 percent when the infection is inactive and chronic, with two or more recurrent episodes of active infection (following the initial infection) within the past 5 years, and at zero percent when the infection is inactive or chronic, with one or no recurrent episodes of active infection (following the initial infection) within the past 5 years. These evaluations would be assigned even when they exceed the evaluation for amputation of a finger or toe, as is the case in the current schedule. The proposed criteria, although similar in scope to the current criteria, are clearer, less complex, and more objective and would promote more consistent evaluations. The proposed criteria are also more in keeping with disability due to osteomyelitis under modern medical treatment.

We also propose to revise the notes under diagnostic code 5000. The current first note states that a rating of 10 percent, as an exception to the amputation rule, is to be assigned in any case of active osteomyelitis where the amputation rating for the affected part is no percent. It goes on to say that this 10-percent rating and the other partial ratings of 30 percent or less are to be combined with ratings for ankylosis, limited motion, nonunion or malunion, shortening, *etc.,* subject, of course, to the amputation rule, and that the 60-percent rating, as it is based on constitutional symptoms, is not subject to the amputation rule. Finally, it states that a rating for osteomyelitis will not be applied following cure by removal or radical resection of the affected bone.

The second note states that the 20-percent rating on the basis of activity within the past 5 years is not assignable

following the initial infection of active osteomyelitis without subsequent reactivation, that two or more episodes following the initial infection are required to assign a 10-percent rating, and that the 10- or 20-percent rating will be assigned only once to cover disability at all sites of previously active infection with a future ending date for the 20-percent rating. These notes are so complex that they have become not only a source of confusion, they are also inconsistently interpreted and applied. We propose to remove both notes and substitute two new notes, with similar information, but in clearer language. Note (1) would direct the rater, subject to the provisions of § 4.68, to combine an evaluation for inactive or chronic osteomyelitis under diagnostic code 5000 with an evaluation for chronic residuals, such as limitation of motion, ankylosis, *etc.,* and for pain (under § 4.59) when appropriate, under the appropriate diagnostic code. Note (2) would direct the rater to evaluate, after removal or resection of the infected bone, under the diagnostic code most appropriate for evaluating the residuals, such as amputation, shortening, limitation of motion, etc., but not under the criteria for diagnostic code 5000. Removing the ambiguities and providing instructions for rating in more succinct and clearer language would promote consistency of ratings.

Arthritis

Rheumatoid arthritis, diagnostic code 5002, is currently evaluated either as an active process or on the basis of chronic residuals. For active arthritis, a 100-percent evaluation is assigned if there are constitutional manifestations and active joint involvement, and the condition is totally incapacitating. A 60-percent evaluation is assigned when the criteria for a 100-percent evaluation are not met, but there are weight loss and anemia productive of severe impairment of health, or severely incapacitating exacerbations occurring four or more times a year, or a lesser number over prolonged periods. A 40-percent evaluation is assigned for symptom combinations productive of definite impairment of health objectively supported by examination findings or if there are incapacitating exacerbations occurring three or more times a year. A 20-percent evaluation is assigned if there are one or two exacerbations a year in a well-established diagnosis. Alternatively, chronic residuals, such as limitation of motion or ankylosis, favorable or unfavorable, are rated under the appropriate diagnostic codes for the specific joints involved. When the limitation of motion of the specific joints is noncompensable, 10 percent is assigned for each major joint or group of minor joints with limitation of motion, and these are combined. A note states that ratings for the active process will not be combined with the residual ratings for limitation of motion or ankylosis.

The consultants suggested minor changes under diagnostic code 5002, such as listing specific constitutional manifestations that might occur. However, because the current criteria contain language that is subjective and undefined, such as ''severe'' and ''definite'' impairment of health, ''severely incapacitating'' and ''incapacitating'' exacerbations, we propose to replace them with more objective criteria that are in accord with the consultants' recommendations. We propose that a 100-percent evaluation be assigned based on constant or near-constant debilitating signs and symptoms due to a combination of inflammatory synovitis (pain, swelling, tenderness, warmth, and morning stiffness in and around joints) and destruction of multiple joints, plus extra-articular (other than joint) manifestations. These are findings that represent the most severe, advanced form of rheumatoid arthritis. We propose that evaluations other than 100 percent be based on the frequency and total duration of incapacitating exacerbations or flares of rheumatoid arthritis. The 60-percent evaluation would require incapacitating exacerbations or flares with a total duration of at least six weeks during the past 12-month period due either to inflammatory synovitis and destruction of multiple joints, or to a combination of joint problems and extra-articular manifestations. The 40-percent evaluation would require exacerbations or flares with a total duration of at least 4 weeks, but less than 6 weeks, during the past 12-month period due to inflammatory synovitis, weakness, and fatigue. The 20-percent evaluation would require incapacitating exacerbations or flares with a total duration of at least 2 weeks but less than 6 weeks during the past 12-month period due to inflammatory synovitis, weakness, and fatigue. The 10-percent evaluation would require incapacitating exacerbations or flares with a total duration of at least 1 week but less than 2 weeks during the past 12-month period due to inflammatory synovitis, weakness, and fatigue. These criteria are similar to those in the current schedule and to those recommended by the consultants, and are also consistent with the evaluation levels we have provided for other conditions characterized by incapacitating episodes, such as hepatitis C, diagnostic code 7354, in the digestive portion of the rating schedule.

We propose to add four notes under diagnostic code 5002 to further assist evaluation. Note (1) would direct that rheumatoid arthritis be evaluated based either on the evaluation criteria under diagnostic code 5002 or on the combined evaluation of chronic residuals of affected joints, whichever method results in a higher evaluation. This is similar to instructions in a current note.

Note (2) would direct that when evaluating based on chronic joint residuals, each affected major joint or group of minor joints will be evaluated on findings such as limitation of motion, ankylosis, joint instability, etc., under the appropriate diagnostic code, and each will be combined with an evaluation for pain under § 4.59 when appropriate. We propose to remove the current provision requiring that 10 percent be assigned for each major joint or group of minor joints with limitation of motion that is less than 10-percent disabling, because painful motion would be assessed under the provisions of § 4.59, and limitation of motion otherwise will be evaluated at the same level as limitation of motion due to other conditions. This would promote both internal consistency in the rating schedule and consistency in rating veterans with similar degrees of disability due to different conditions. Proposed note (3) would direct raters to separately evaluate extra-articular manifestations of rheumatoid arthritis, such as pulmonary fibrosis; pleural inflammation; weakness or atrophy of muscles; emaciation; anemia; vasculitis (of skin or systemic); neuropathy, such as peripheral nerve neuropathy, entrapment neuropathy, and cervical myelopathy; pericarditis; Sjogren's syndrome (dry eyes and mouth); and eye complications (such as scleritis and episcleritis), under the appropriate diagnostic code, unless they have been used to support an evaluation at 60 or 100 percent under diagnostic code 5002. This will assure that all disabling manifestations of rheumatoid arthritis are appropriately evaluated, while also avoiding evaluating the same disability twice (see proposed § 4.14, ''Avoiding overlapping of evaluations''). The current schedule does not provide directions for evaluating extra-articular manifestations.

Proposed note (4) would define an incapacitating exacerbation or flare as one requiring bedrest or wheelchair use and treatment by a health care provider. This is similar to the definition of

incapacitating episodes we have provided for evaluating chronic liver disease without cirrhosis (diagnostic code 7345) and hepatitis C (diagnostic code 7354) in § 4.114 of the rating schedule.

We propose to change the heading of diagnostic code 5003 from ''Arthritis, degenerative (hypertrophic or osteoarthritis)'' to ''Osteoarthritis (degenerative or hypertrophic arthritis),'' as recommended by the consultants, because the disease is now most commonly referred to as osteoarthritis. Osteoarthritis established by X-ray findings is currently evaluated on the basis of limitation of motion under the appropriate diagnostic codes for the specific joint or joints involved. When the limitation of motion of the specific joint or joints is noncompensable, a rating of 10 percent is assigned for each major joint or group of minor joints with limitation of motion, and this 10 percent is combined, not added, under diagnostic code 5003. The limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion. There are additional directions: (1) In the absence of limitation of motion, when there is X-ray evidence of involvement of 2 or more major joints or 2 or more minor joint groups as the sole finding, with occasional incapacitating exacerbations, 20 percent will be assigned, and (2) with X-ray evidence of involvement of 2 or more major joints or 2 or more minor joint groups as the sole finding, 10 percent will be assigned. Two notes address how to apply these ratings based on X-ray findings and state that they will not be used to rate conditions under diagnostic codes 5013 to 5024. The consultants suggested no substantive change to these criteria.

The current provisions concerning evaluation of osteoarthritis are complex and have sometimes been misinterpreted. The criteria based on limitation of motion, including a noncompensable degree of limitation of motion, are the same as the current instructions for evaluating the chronic residuals of rheumatoid arthritis, and we propose changes similar to those we are proposing for rheumatoid arthritis, and for the same reasons. We propose to replace the current evaluation criteria for osteoarthritis with a direction to separately evaluate each major joint or group of minor joints affected with osteoarthritis based on limitation of motion, ankylosis, joint instability, etc., under the appropriate diagnostic code and to combine that evaluation with an evaluation for pain under § 4.59 when appropriate.

Osteoarthritis tends to be a steadily progressive disease (although it may be better or worse at times), rather than being subject to the incapacitating exacerbations or flares that are common in rheumatoid arthritis, and we therefore do not propose evaluation criteria based on exacerbations or incapacitating episodes. As with rheumatoid arthritis, we propose to remove evaluations based on noncompensable limitation of motion, because pain is the most common symptom of osteoarthritis, and we are proposing to combine an evaluation based on other disabling findings with an evaluation for pain. In our judgment, limitation of motion in osteoarthritis that does not reach the level of a compensable evaluation would not warrant a higher evaluation than a comparable degree of limitation of motion due to other conditions, and pain would be assessed under the provisions of § 4.59, the same as pain due to any other type of musculoskeletal condition.

We also propose to remove the evaluations based on X-ray findings alone or on X-ray findings plus incapacitating exacerbations because abnormal X-ray findings in the absence of signs or symptoms do not justify a compensable evaluation, as there would be no functional impairment. In fact, most people with X-ray evidence of osteoarthritis are asymptomatic (without any symptoms) (''Osteoarthritis: Presentation, Pathogenesis, and Pharmacologic Therapy,'' Paulette C. Hahn, M.D. and Lawrence Edwards, M.D., Clin. Rev. Summer: 9–13, 1998). More than 90 percent of people over the age of 40 have X-ray evidence of osteoarthritis in weight-bearing joints, but only 30 percent are symptomatic (''Harrison's Principles of Internal Medicine'' Eugene Braunwald, M.D., et al eds., ch. 322, 5, 15th ed. 2001). When pain is present, an evaluation under § 4.59 would appropriately compensate the individual. In addition, since incapacitating exacerbations are not characteristic of osteoarthritis, they are not an appropriate basis of evaluation, and we propose to remove that criterion as well. The proposed criteria are clearer and easier to apply than the current criteria, and would promote internal consistency within the rating schedule and consistency in ratings among veterans with similar disabling effects from different musculoskeletal conditions.

We also propose to add three notes. The first note would require that the diagnosis of osteoarthritis of any joint be confirmed (one time only) by X-ray or other imaging procedure. Modern imaging procedures such as magnetic resonance imaging, computed tomography, and bone scans may be used in some cases instead of or in addition to conventional X-rays, and the proposed note would assure that these more sophisticated procedures will be equally accepted for diagnosing osteoarthritis for VA disability compensation purposes.

There is currently no regulatory guidance on whether osteoarthritis is or is not a systemic generalized disease. This has implications for compensation claims because if service-connected osteoarthritis is regarded as a generalized or systemic disease, osteoarthritis developing in other joints in the future would be considered part of the same disease process, and subject to additional compensation. The lack of guidance on this issue has led to inconsistency in rating. Having consulted with the VHA Orthopedic Committee and reviewed the medical literature, we propose to clarify this issue by establishing guidelines about generalized and localized osteoarthritis in two more notes.

Current medical thinking is that osteoarthritis is a group of overlapping distinct diseases. One classification is based on whether the disease is localized or generalized, with indications that the generalized type is a distinct subtype that often affects the hands, hips, knees, and spine. Some clinicians consider osteoarthritis to be generalized only if three extra-spinal (other than spine) joints are affected. The concept of localized and generalized osteoarthritis is also discussed in a recent book on osteoarthritis (''Diagnosis and Nonsurgical Management of Osteoarthritis'' by Kenneth D. Brandt, M.D., 1996), which states that idiopathic osteoarthritis is divided into localized and generalized types and that the generalized type involves three or more joint groups. The book references a 1952 classic article in the *British Medical Journal* (''Generalized Osteoarthritis and Heberden's Nodes,'' J. H. Kellgren, F.R.C.P., F.R.C.S. and R. Moore, M.R.C.P., *British Medical Journal,* 1952. 1:181–187), which also described generalized osteoarthritis as involving three or more joint groups. A new standard medical textbook (Harrison's, ch. 322, 1) also differentiates between localized and generalized osteoarthritis, indicating that primary localized osteoarthritis is present when there is involvement of the hands, feet, knees, hips, spine, or other single sites, such as the glenohumeral (shoulder) joint,

sacroiliac joints, or temperomandibular joints and that primary generalized osteoarthritis is characterized by involvement of three or more joints or groups of joints (distal interphalangeal and proximal interphalangeal joints are counted as one group each). The VHA Orthopedic Committee also suggested that we consider osteoarthritis to be the generalized type if there is positive evidence of osteoarthritis on X-ray or other imaging procedure and on physical examination of at least three joints during service.

Therefore, with the generalized type of osteoarthritis, we propose that additional joints that later develop osteoarthritis would be recognized as part of the same generalized systemic process. If less than three joints have positive evidence of osteoarthritis on X-ray or other imaging procedure and on physical examination, the condition would be considered localized osteoarthritis, and joints later developing osteoarthritis would not be considered part of the same process. Since arthritis is a chronic condition subject to presumptive service condition under the provisions of 38 CFR 3.309(a), meaning that osteoarthritis of a joint is presumed to be service-connected if it manifests to at least a 10-percent level of disability within 1 year of the date of separation from service, we propose to include the 1-year period for presumptive service connection in our guidelines that determine when generalized osteoarthritis is present. We propose to add a second note titled ''Generalized osteoarthritis,'' which states that if osteoarthritis is diagnosed on the basis of positive X-ray or other imaging procedure and positive physical findings in three or more joints (major joints, groups of minor joints, or both) during service or within 1 year following the date of separation from service, the condition will be considered to be generalized osteoarthritis and recognized as a systemic condition. It also says that once generalized osteoarthritis has been established based on these criteria, all joints subsequently diagnosed with osteoarthritis will be considered to be part of the same condition.

We propose to add a third note titled ''Localized osteoarthritis'' that would state that osteoarthritis diagnosed on the basis of positive X-ray or other imaging procedure and positive physical findings in fewer than three joints (major joints, groups of minor joints, or both) during service or within 1 year following the date of separation from service will be considered to be localized osteoarthritis rather than a systemic condition. It also says that with localized osteoarthritis, any joints subsequently diagnosed with osteoarthritis will not be considered to be part of the same condition. Adding notes (2) and (3) would promote more consistent determinations about when joints with osteoarthritis diagnosed after service and the 1-year period following separation from service will and will not be considered to be part of the osteoarthritis already related to service, and this guidance is consistent with current medical thinking.

Other types of arthritis are currently evaluated under diagnostic code 5004 (Arthritis, gonorrheal), 5005 (Arthritis, pneumococcic), 5006 (Arthritis, typhoid), 5007 (Arthritis, syphilitic), 5008 (Arthritis, streptococcic), 5009 (Arthritis, other types (specify)), 5010 (Arthritis, due to trauma, substantiated by X-ray findings), and 5017 (Gout or pseudogout), with directions that all but traumatic arthritis are to be rated as rheumatoid arthritis. Since the specific infectious types of arthritis are uncommon, we propose to combine them all under diagnostic code 5004, to be retitled ''Infectious arthritis (gonorrheal, pneumococcic, typhoid, syphilitic, streptococcic, etc.).'' We propose to retitle diagnostic code 5009 as ''Other types of noninfectious inflammatory arthritis (including ankylosing spondylitis, Reiter's syndrome, psoriatic arthritis, arthritis associated with inflammatory bowel disease, and other seronegative types of arthritis).'' We propose to retitle diagnostic code 5017, currently ''Gout,'' as ''Gout or pseudogout'' to make it clear that it encompasses both conditions. These changes will provide the rater with clear instructions on evaluating each of these disabilities. The groupings are possible because of the similar effects of each of these groups of arthritis.

Infectious arthritis is currently evaluated on the same basis as rheumatoid arthritis. However, infectious arthritis is ordinarily an acute condition involving only one joint. In about 60 percent of cases, the infection will heal without residuals if treatment is prompt and adequate, particularly with the use of modern antibiotics. However, some cases of infectious arthritis involve multiple joints, and some are intractable to treatment and leave severe joint disability. Infectious arthritis is therefore unlike rheumatoid arthritis, which is a chronic disease affecting multiple joints, and the current direction to evaluate as rheumatoid arthritis is not ideal. Infectious arthritis is somewhat similar in behavior to osteomyelitis. We therefore propose to provide two bases of evaluation that are similar to those for osteomyelitis, with one set of criteria to be used for evaluation during the active infection and for three months following cessation of therapy for active infectious arthritis, with the evaluation depending on which joint or joints are infected, as with osteomyelitis. The other set of criteria would be used for evaluating the chronic residuals of infectious arthritis after the three-month period following the cessation of therapy for the active infection has ended. We propose that active infectious arthritis of the spine, the pelvis, or a major joint be evaluated at 100 percent during and for three months following cessation of therapy; that active infectious arthritis not involving the spine, the pelvis, or a major joint, and not limited to a single finger or toe be evaluated at 40 percent during and for three months following cessation of therapy; and that active infectious arthritis of a single finger or toe be evaluated at 10 percent during and for three months following cessation of therapy. While the course may be prolonged, there are not usually multiple recurrences as with osteomyelitis, and we do not propose to use evaluation criteria based on recurrences as we have for osteomyelitis. We propose to add a note under diagnostic code 5004 directing that raters separately evaluate chronic residuals, if any, of each joint affected with infectious arthritis, based on limitation of motion, ankylosis, joint instability, post-surgical residuals (such as arthroplasty), *etc.,* under the appropriate diagnostic code, and combine the evaluation for chronic residuals of each joint with an evaluation for pain under § 4.59 when appropriate, subject to the limitations of § 4.68. This method of evaluating residuals is proposed because, although many active infections heal without residuals, some result in destruction of a joint resulting in arthritis, instability, etc., and some lead to such severe residuals that arthroplasty is required. These proposed criteria are more specific to the effects of infectious arthritis than the current criteria and provide a broad range of objective evaluations for both the active stage of infection and any chronic disability that might develop.

We propose to retitle diagnostic code 5009, ''Arthritis, other types,'' as ''Other types of noninfectious inflammatory arthritis (including ankylosing spondylitis, Reiter's syndrome, psoriatic arthritis, arthritis associated with inflammatory bowel disease, and other seronegative types of arthritis)'' for clarity. There is currently a direction to

evaluate the types of arthritis specified under diagnostic codes 5004 through 5009 as rheumatoid arthritis (5002). We propose to continue evaluating other types of noninfectious arthritis under the same criteria and range of evaluation as rheumatoid arthritis, except for providing a list of extra-articular manifestations more specific to these types of arthritis, namely, fever, eye problems (such as conjunctivitis, iritis, uveitis), genitourinary or gynecologic problems (such as urethritis, cystitis, prostatitis, cervicitis, salpingitis, vulvovaginitis), or heart problems (pericarditis, aortic valvular disease, heart block), in a note. We also propose to add four notes similar to those under diagnostic code 5002.

For traumatic arthritis, diagnostic code 5010, we propose to remove from the current title the reference to a requirement for X-ray evidence and add a note stating that the diagnosis of traumatic arthritis of any joint must be confirmed (one time only) by X-ray or other imaging procedure. X-ray evidence of traumatic arthritis is currently required by the schedule, but newer imaging procedures are now often substituted for X-rays and provide comparable or better information about the presence of arthritis, so this provision is in keeping with current medical practice. Once traumatic arthritis has been demonstrated, there is no need for repeat X-rays or other imaging procedures, so we are requiring confirmation by imaging procedure only once to avoid unnecessary imaging studies. We also propose to add to the title the term ''secondary osteoarthritis'' because traumatic arthritis can occur, due not only to trauma, but also to other diseases, such as tuberculosis or gout, deformity of other joints, or stress due to amputation. Traumatic arthritis is currently evaluated as degenerative arthritis. We propose to continue this method of evaluation, since the findings clinically and on X-ray of traumatic and osteoarthritis are usually indistinguishable. For the convenience of raters, we propose to repeat the evaluation criteria for osteoarthritis under diagnostic code 5010.

Caisson Disease, Benign and Malignant Bone Neoplasms, Osteomalacia, Osteoporosis

We propose to update the title of diagnostic code 5011, ''Bones, caisson disease of,'' to ''Caisson disease (residuals of decompression sickness or ''the bends'')'' and to broaden its scope by providing rating instructions for the evaluation of residuals other than those affecting bone. We propose that evaluation be made under an appropriate diagnostic code based on the actual residuals, such as aseptic necrosis or delayed osteoarthritis of the shoulder or hip or neurologic manifestations (such as weakness or paraplegia of lower extremities, vestibular dysfunction with vertigo, or paresthesias of the extremities). These are the most common disabling long-term effects of Caisson disease, and there is no other appropriate diagnostic code under which to rate them.

We propose to modernize the title of diagnostic code 5012 from ''Bones, new growths of, malignant'' to ''Malignant neoplasm of bone.'' The current schedule provides a 100-percent evaluation for one year following surgery or the cessation of antineoplastic therapy. This provision is applied at the time of rating by assigning a one-year total evaluation with a prospective reduction consistent with the protected or minimum evaluation. In our judgment, evaluating based on impairment of function due to the actual residuals found is the most accurate and equitable basis for evaluating residuals of malignancy, so, as we have done in the revisions of other portions of the rating schedule, for example, diagnostic code 7528 in § 4.115b, ''Malignant neoplasms of the genitourinary system,'' we propose to continue a 100-percent rating following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability evaluation shall be determined on the basis of a VA examination, or on available medical records if sufficient for evaluation. Before any reduction in evaluation based upon the examination can be made, the provisions of § 3.105(e) (which would provide notice of any proposed reduction and afford claimants the opportunity to present evidence showing that a proposed reduction should not be made) must be implemented. Evaluation is then made on residuals if there has been no metastasis or recurrence.

The current schedule evaluates ''Osteoporosis, with joint manifestations'' (diagnostic code 5013) based on limitation of motion of affected parts as degenerative arthritis. Osteoporosis is an age-related condition characterized by decreased bone mass and structural deterioration of bone tissue, leading to bone fragility and an increased susceptibility to fractures—especially of the vertebral bodies of the spine, the hip (particularly the neck and intertrochanteric regions of the femur), and the wrist (distal radius). It is ordinarily asymptomatic until a fracture occurs. Joint manifestations are not always present; vertebral fractures, for example, may result primarily in neurologic complications. We therefore propose to revise the title to ''Osteoporosis'' and direct the rater to evaluate under the appropriate diagnostic code based on a combination of the residuals of fractures (such as shortening, deformity, limitation of motion, osteoarthritis) with an evaluation for pain (under § 4.59) when appropriate, and to evaluate separately any secondary complications, such as neurologic manifestations, pulmonary restriction due to thoracic deformity from vertebral fractures, *etc.* These criteria would provide more specific and accurate guidance to raters concerning the disabling effects of osteoporosis.

Diagnostic code 5014, ''Osteomalacia,'' is currently evaluated based on limitation of motion as osteoarthritis (diagnostic code 5003). Osteomalacia is a form of metabolic bone disease resulting from vitamin D deficiency. In children, the same condition is called rickets. In adults, osteomalacia is characterized by easy fatigability, malaise, poorly defined or localized bone pain, often with bone tenderness, and sometimes muscle weakness. Pathological fracture (due to weakened bone) or aseptic (avascular) necrosis of a bone may occur and be the initial evidence of the condition. Most cases are associated with chronic renal disease, but osteomalacia may also be associated with diseases of the gastrointestinal tract or other body systems. X-rays will usually show evidence of the condition. We propose to provide more detailed guidance on evaluation by directing the rater to evaluate under the appropriate diagnostic code, based on aseptic necrosis, residuals of fracture (such as shortening, deformity, limitation of motion, osteoarthritis), to be combined with an evaluation for bone pain (under § 4.59) when appropriate. Constitutional manifestations, such as malaise and easy fatigability, would be evaluated as part of the underlying metabolic disease, such as renal or gastrointestinal disease, that has caused the osteomalacia.

As with malignant neoplasms of bone, we propose to update the title of diagnostic code 5015, ''Bones, new growths of, benign,'' to ''Benign neoplasm of bones.'' The current schedule directs that these neoplasms be evaluated as degenerative arthritis based on limitation of motion. That method of evaluation would be appropriate when the neoplasm involves a joint, but many do not. At

times bone pain or pathologic fracture is the major problem. Many are asymptomatic and discovered as an incidental finding when a bone is X-rayed for another problem. We therefore propose to expand the directions to include evaluation under the appropriate diagnostic code based on osteoarthritis (diagnostic code 5003), residuals of fracture (such as shortening, limitation of motion), *etc.,* to be combined with an evaluation for bone pain (under § 4.59) when appropriate.

Paget's Disease, Gout and Pseudogout

We propose to update the title of diagnostic code 5016, currently ''Osteitis deformans'' to the modern name for this disease, ''Paget's disease.'' Paget's disease is currently evaluated based on limitation of motion as osteoarthritis. It is a disease characterized by enlarged, heavily calcified, and often deformed, but also weak, bones in any area of the body, most commonly the pelvis, femur, tibia, skull, vertebrae, clavicle, and humerus. The most common symptom is bone pain, and deformity, arthritis, and fractures may occur. Pressure on cranial nerves due to enlargement of the skull by the disease can lead to impaired hearing or vision. We therefore propose to provide a broader set of evaluation criteria that encompass more of the disabling effects of Paget's disease by directing raters to evaluate it based on osteoarthritis or residuals of fracture, combined with an evaluation for pain (under § 4.59) when appropriate, and to separately evaluate complications such as impaired hearing or vision.

''Gout'' (diagnostic code 5017), which we propose to retitle ''Gout or pseudogout,'' is currently evaluated as rheumatoid arthritis. However, there are major differences between rheumatoid arthritis and gout. Gout, for example, which is a type of arthritis in which uric acid crystals are deposited around joints, usually involves acute inflammation of only a single joint at a time, rather than the widespread joint involvement common in rheumatoid arthritis. Also, gout is not associated with the same types of extra-articular manifestations as rheumatoid arthritis, and there may be none at all except late in the course of the disease when tophi (deposits of sodium urate that develop in gout) have been deposited in tissues other than joint areas. Pseudogout (caused by deposits of calcium pyrophosphate crystals in joint tissues) has manifestations that are similar to gout, but usually milder. We therefore propose to provide a modified version of the rheumatoid arthritis evaluation criteria for evaluating gout and pseudogout. We propose not to provide a 100-percent evaluation level for gout or pseudogout, since neither condition is likely to be totally disabling. We propose to retain 60-, 40-, and 20-percent evaluation levels and to add a 10-percent evaluation level for gout and pseudogout based on inflammatory synovitis with such findings as weakness and fatigue, acute pain, swelling, heat, tenderness, or limitation of motion. The 60-percent level would require incapacitating exacerbations or flares with a total duration of at least 6 weeks during the past 12-month period requiring treatment by a health care provider, due to inflammatory synovitis with such findings as weakness and fatigue, acute pain, swelling, heat, tenderness, or limitation of motion of multiple joints. The 40-percent level would be the same except that it requires incapacitating exacerbations or flares of multiple joints with a total duration of at least 4 weeks but less than 6 weeks during the past 12-month period. The 20-percent level would require incapacitating exacerbations or flares with a total duration of at least 2 weeks but less than 4 weeks during the past 12-month period of multiple joints. The 10-percent evaluation would require incapacitating exacerbations or flares with a total duration of at least 1 week but less than 2 weeks during the past 12-month period of a single joint or multiple joints. This would provide appropriate criteria to evaluate the acute attacks of inflammation of either single or multiple joints. We propose to provide notes similar to those under diagnostic code 5002 (rheumatoid arthritis). The first note would direct that evaluation be made either on the basis of incapacitating exacerbations or flares under the criteria for diagnostic code 5017 or on the combined evaluation of chronic residuals of gout or pseudogout, whichever results in the higher evaluation. The second note would direct that if not evaluating under the criteria under diagnostic code 5017, chronic residuals of each major joint or group of minor joints with gout or pseudogout will be separately evaluated based on limitation of motion, ankylosis, joint instability, *etc.,* under the appropriate diagnostic code. It further directs that an evaluation for chronic residuals of each major joint or group of minor joints be combined with an evaluation for pain under § 4.59 when appropriate. The third note would direct that manifestations of gout other than joint disease, such as urinary tract calculi or gouty nephropathy, be separately evaluated. The fourth note would define an incapacitating exacerbation or flare as one requiring bedrest or wheelchair use and treatment by a health care provider. The proposed criteria are more specific to gout and pseudogout than the current criteria and will therefore promote consistent and appropriate evaluations in veterans with one of these joint diseases.

Joint Effusion, Bursitis, Tenosynovitis, Synovitis, Myositis, Periostitis, Myositis Ossificans

Diagnostic code 5018 is titled ''Hydrarthrosis, intermittent,'' which means fluid occurring in a joint from time to time. This finding may be a sign of various joint diseases and does not indicate a specific diagnosis. We propose updating the title of this code to ''Joint effusion,'' which is the current medical term for this condition. The current schedule directs that evaluation be based on limitation of motion as osteoarthritis. Since osteoarthritis is one of the conditions that may result in joint effusion, it is more likely that osteoarthritis would be evaluated as joint effusion than vice versa. Joint effusion, being a nonspecific response to injury or disease of a joint, may result from any number of types of injury, both bone and soft tissue; from almost any type of arthritis, including infectious arthritis; from osteomyelitis; from surgery in or near a joint; *etc.* The criteria for evaluation under this diagnostic code would be used in evaluating musculoskeletal conditions where joint effusion is the predominant finding. We propose that evaluation of joint effusion be based on limitation of motion, a common concomitant of joint effusion, and this evaluation would be combined with an evaluation for pain under § 4.59 when appropriate. The current schedule requires that the joint effusion be ''intermittent,'' but does not define ''intermittent''. To promote consistency, we propose to add a statement that a joint effusion that is present constantly, or nearly so, or if intermittent, that occurred at least two times during the past 12-month period, may be evaluated under this diagnostic code and that evaluation will be based on limitation of motion, to be combined with an evaluation for pain under § 4.59 when appropriate. We require at least two episodes of joint effusion because a single episode would represent only an acute condition that might never recur. These criteria are both more objective and more specific to joint effusion than the current criteria.

''Bursitis,'' diagnostic code 5019, is currently evaluated based on limitation of motion as osteoarthritis, as are all the conditions in diagnostic codes 5013 through 5024 except gout. Bursae are

fluid-filled structures that assist motion between adjacent structures (skin, bones, muscles, tendons) by decreasing friction. Bursitis is an inflammation of the lining of the bursa, which is a sac made up of synovial tissue, the same tissue that lines joints. Bursitis is commonly due to chronic overuse or an injury, although it may also be associated with systemic diseases such as rheumatoid arthritis or scleroderma. The bursae in the area of the hip, patella or other knee area, shoulder, and olecranon process of the ulna are common sites of bursitis. Signs and symptoms of bursitis include pain, tenderness, redness, heat, swelling, and limitation of motion. We therefore propose to revise the evaluation criteria to base evaluation on limitation of motion, to be combined with an evaluation for pain under § 4.59 when appropriate.

The causes of, and findings in, tenosynovitis, diagnostic code 5024, and synovitis, diagnostic code 5020, are similar to those for bursitis, and they may also be infectious in origin. Tenosynovitis (also called tendinitis) is an inflammation of the tendon and tendon sheath and may result in pain, limitation of motion, tenderness, and swelling. Synovitis is an inflammation of the synovial (joint-lining) tissue only. We propose to provide the same evaluation criteria for synovitis and tenosynovitis as for bursitis.

Myositis (diagnostic code 5021) is an inflammation of muscles with pain, tenderness, and sometimes swelling. It may be due to trauma or a virus, or may be drug-related. We propose that it be evaluated based on limitation of motion, to be combined with an evaluation for pain under § 4.59 when appropriate. There is another category of more widespread myositis that includes systemic autoimmune connective tissue diseases like polymyositis, dermatomyositis, and inclusion body myositis. They are diseases that may also affect joints, the heart, lungs, intestines, and skin. Because these types of myositis affect multiple body systems, they are more appropriately evaluated in the ''Infectious Diseases, Immune Disorders and Nutritional Deficiencies (Systemic Conditions)'' portion of the rating schedule, perhaps analogous to systemic lupus erythematosus (diagnostic code 6350), rather than under this diagnostic code.

Periostitis (diagnostic code 5022) is another inflammatory condition (of the periosteum or outer covering of a bone) that may develop as a result of overuse or infection. At times it follows severe tenosynovitis. Periostitis is one of the causes, along with stress fractures and tenosynovitis, of shin splints (pain in the lower leg that occurs during exercise) or posterior tibial stress syndrome or lower leg stress. Tennis elbow (periostitis of the lateral epicondyle of the humerus, often following tendinitis of the extensor carpi radialis brevis in the area of the lateral epicondyle), golfer's elbow (periostitis of the medial epicondylitis of the humerus often following tendinitis of the flexor pronator muscles), and osteitis pubis are other common types of periostitis. We propose to evaluate this condition based on limitation of motion, and to combine this with an evaluation for pain under § 4.59 when appropriate.

Myositis ossificans, diagnostic code 5023, is a condition in which there is ossification (bone formation) in soft tissues such as muscle and tendons. It most often results from trauma or repetitive stress, sometimes representing an ossified intramuscular hematoma. In many cases, the cause is unknown. It may result in pain, tenderness, redness, heat, a palpable mass, and decreased range of motion. We therefore propose to evaluate it based on limitation of motion, and to combine this with an evaluation for pain under § 4.59 when appropriate.

Other than terminology changes, which we are proposing to adopt, the consultants offered few suggestions for changes under diagnostic codes 5011 to 5024. One exception was osteoporosis (diagnostic code 5013), for which they suggested evaluation levels of zero, 20, 50, and 100 percent, based on such criteria as X-ray evidence of ''some'' ''moderate,'' ''severe'' demineralization, on the severity of spine pain (''mild,'' ''moderate,'' or ''disabling''), and on the history of fractures (requiring a history of two fractures for 50 percent, and three or more fractures for 100 percent). These criteria would require subjective determinations of various degrees of spine pain and X-ray findings. In addition, in our judgment, how many fractures have occurred is not as significant as how disabling the residuals of those fractures are. We therefore propose to evaluate based on the actual residuals of fractures and any secondary complications, as discussed above. We believe these criteria would provide an evaluation that presents a truer picture of disability and would promote consistent evaluations by correlating evaluations with disabling residuals of fractures rather than simply with numbers of fractures.

Prosthetic Joint Implants

The diagnostic codes for prosthetic joint implants (joint replacements or arthroplasties) (5051 through 5056) currently provide a 100-percent evaluation for one year of convalescence following hospital discharge. This provision is applied at the time of rating by assigning a 100-percent evaluation for one month under § 4.30 (''Convalescent ratings''), followed by a 100-percent evaluation with a prospective reduction one year later based on medical findings. As the consultants recommended, we propose to continue the 100-percent evaluation indefinitely from date of hospital admission and to examine the veteran six months following discharge from the hospital, because almost all individuals are stabilized within six months of implant. Any reduction in the 100-percent evaluation would be effected under 38 CFR 3.105(e) in the same manner as proposed under diagnostic code 5012 (malignant neoplasm of bone). This would ensure that a veteran receives advance notice of any reduction and has the opportunity to submit additional evidence showing that the reduction is not warranted. We also propose to state that the same method of evaluation will be applied when an arthroplasty is revised or redone, since this procedure is at least as disabling as the original arthroplasty.

The consultants suggested deleting separate evaluations for dominant and nondominant upper extremity joint replacements. We do not propose to do so, because joint replacements of a dominant side—that is, the side normally used for writing, feeding, grooming, and other important tasks—would clearly be more disabling to an individual than joint replacement of the less used nondominant side.

Diagnostic code 5051, ''Shoulder replacement (prosthesis)'' is currently evaluated at 100 percent for one year following implantation; at 60 or 50 percent (for dominant or nondominant side) if there are chronic residuals consisting of severe, painful motion or weakness in the affected extremity; analogous to diagnostic codes 5200 (ankylosis of scapulohumeral articulation) and 5203 (impairment of clavicle or scapula) if there are intermediate degrees of residual weakness, pain, or limitation of motion; and at 30 or 20 percent as a minimum evaluation. The consultants suggested no change. We propose to revise and update the title to ''Total or partial shoulder arthroplasty or replacement (with prosthesis)'' and to make similar changes to the titles of arthroplasty of all major joints, elbow (diagnostic code 5052), wrist (diagnostic code 5053), hip (diagnostic code 5054, knee (diagnostic code 5055), and ankle (diagnostic code

5056). These changes would indicate that evaluation is the same whether the entire joint or only one side of the joint has been replaced, (and whether this is an initial or a revision arthroplasty, as the note preceding the prosthetic implants diagnostic codes states) since complications and residuals may be the same. We also propose to revise the criteria to remove subjective language such as ''severe'' painful motion or weakness and ''intermediate'' degrees of weakness, pain, or limitation of motion, which could be subject to different interpretations by different individuals.

We propose to replace these criteria with more objective criteria in order to promote consistent ratings. For example, we propose that 60 or 50 percent be assigned if abduction (movement of the arm away from the body) is not possible beyond 45 degrees; and that the minimum evaluation of 30 or 20 percent following arthroplasty be unchanged. We also propose to add a note directing that if there is ankylosis of the glenohumeral joint, evaluation is to be made under diagnostic code 5200 (ankylosis of glenohumeral articulation (shoulder joint)). There may be neurologic or other complications following arthroplasty. We therefore propose to add a second note directing that complications, such as peripheral neuropathy, causalgia (a severe burning pain that occasionally occurs following injury to a nerve), and reflex sympathetic dystrophy (soft tissue and bony changes that accompany causalgia), be separately evaluated under an appropriate diagnostic code and combined with an evaluation under diagnostic code 5051 that is less than total, as long as limitation of abduction is not used to support an evaluation for a complication. We propose to add a third note directing that an evaluation under diagnostic code 5051 be combined with an evaluation for pain under § 4.59 when appropriate.

Elbow replacement (diagnostic code 5052), following the initial 100-percent evaluation, is currently evaluated at 50 or 40 percent if there is severe painful motion or weakness; by analogy to diagnostic codes 5205 through 5208 (which provide evaluation criteria for ankylosis or limitation of motion of the elbow) if there are intermediate degrees of residual weakness, pain or limitation of motion; and at 30 or 20 percent as a minimum evaluation. These criteria contain subjective language, and we propose to revise them to more objective criteria, directing the rater to evaluate based on the criteria under diagnostic codes 5205, 5206, 5207, or 5208, whichever results in the highest evaluation, combining this evaluation with an evaluation for pain under § 4.59 when appropriate. We propose to retain the minimum evaluations of 30 (for dominant side) or 20 percent following arthroplasty.

Wrist replacement (5053) is currently evaluated under the same criteria as elbow arthroplasty, but with evaluations of 40 or 30 percent if there is severe painful motion or weakness; by analogy to diagnostic code 5214 (ankylosis of wrist) if there are intermediate degrees of residual weakness, pain or limitation of motion; and at 20 percent as a minimum evaluation. We propose to revise these criteria to make them more objective, as we have proposed for other upper extremity arthroplasties, by directing the rater to evaluate based on ankylosis (diagnostic code 5214) or limitation of motion (diagnostic code 5215), whichever results in a higher evaluation, combining this evaluation with an evaluation for pain under § 4.59 when appropriate. We propose to retain the minimum 20-percent evaluation following arthroplasty.

Hip replacement (diagnostic code 5054) is currently evaluated at 100 percent for 1 year, as discussed above; at 90 percent if there is painful motion or weakness such as to require the use of crutches; at 70 percent if there is markedly severe residual weakness, pain, or limitation of motion; at 50 percent if there are moderately severe residuals of weakness, pain, or limitation of motion; and at 30 percent as a minimum. The consultants did not suggest substantive changes, other than to recommend that the 100-percent evaluation be reassessed six months following implantation, as for all joint prostheses.

We propose to retitle 5054 as ''Total or partial hip arthroplasty or replacement (with prosthesis)''. In addition to following the consultants' recommendation concerning the 100-percent evaluation, we propose other changes to make the criteria more objective, after consultation with the VHA Orthopedic Committee. For example, the consultants did not address the subjective language such as ''markedly'' and ''moderately'' severe in the current criteria. We propose to revise the criteria for the 90-percent evaluation to ''requiring use of two crutches or a walker for ambulation,'' because a walker is equivalent to two crutches and is an indication of significant impairment in ambulation. We propose to base the next two lower levels of evaluation on the extent of need for ambulatory support, which is an objective basis of evaluation, assigning a 70-percent evaluation if one crutch or two canes are required for most ambulation, due to pain, instability, or weakness (muscle strength grade zero to 2 out of 5), and a 50-percent evaluation if one crutch or two canes are required only for ambulating long distances (500 feet or more), due to pain, instability, or weakness (muscle strength grade 3 to 4 out of 5), since the need to use two canes or one crutch is another indication of difficulty ambulating, and they are approximately equivalent. We propose to add a 40-percent level, to be assigned if one cane is required for ambulation, due to pain, instability, or weakness, or if there is recalcitrant thigh pain of longer than 2 years' duration, and to retain a 30-percent minimum evaluation following arthroplasty. The VHA Orthopedic Committee described the residual of thigh pain as a disabling finding that is common enough to be addressed and which could be the primary residual after 2 years. We also propose to add a note directing raters not to combine an evaluation under these criteria with an evaluation for pain under § 4.59. Pain as a residual of arthroplasty is taken into account in these evaluation criteria.

Knee replacement (diagnostic code 5055) currently has the same relatively subjective criteria as other arthroplasties, with 60 percent assigned if there are chronic residuals consisting of severe painful motion or weakness in the affected extremity; rating by analogy to diagnostic codes 5256, 5261, or 5262 (the codes for ankylosis of the knee, limitation of extension of the leg, and impairment of the tibia and fibula) if there are intermediate degrees of residual weakness, pain or limitation of motion; and a minimum evaluation of 30 percent. The consultants recommended criteria that retained much of the same subjective language. After consultation with the VHA Orthopedic Committee, however, we propose to provide more objective criteria that parallel the evaluation criteria for hip arthroplasty based on ambulation, plus criteria based on the extent of limitation of the normal whole arc of motion (the full range of flexion and extension) of the knee after arthroplasty, which is 0 degrees of extension to 110 degrees of flexion. As with hip arthroplasty, we propose to assign a 90-percent evaluation for residuals requiring use of two crutches or a walker for ambulation; a 70-percent evaluation for residuals requiring the use of one crutch or two canes for most ambulation, due to pain, instability, or weakness (muscle strength grade zero to 2 out of 5) or if there is loss of more than 40 degrees of the full arc of motion; at

50 percent if requiring use of one crutch or two canes only for ambulating long distances (500 feet or more), due to pain, instability, or weakness (muscle strength grade 3 to 4 out of 5), or if there is loss of 21 to 40 degrees of the full arc of motion; and at 40 percent if residuals require the use of one cane or brace for ambulation, due to pain, instability, or weakness, or if there is loss of 10 to 20 degrees of the full arc of motion. We propose to retain a 30-percent evaluation for residuals as a minimum following arthroplasty. We also propose to add two notes, the first stating that a full arc of motion of the knee after arthroplasty is a range of motion of 0 to 110 degrees, and the second directing raters not to combine an evaluation under these criteria with an evaluation for pain under § 4.59. Pain as a residual of arthroplasty is taken into account in these evaluation criteria.

Ankle replacement (diagnostic code 5056), is currently evaluated under the same criteria as other arthroplasties, with 40 percent assigned if there are chronic residuals consisting of severe painful motion or weakness in the affected extremity; rating by analogy to diagnostic codes 5270 or 5271 if there are intermediate degrees of residual weakness, pain or limitation of motion; and a minimum evaluation of 20 percent. We propose similar changes for this arthroplasty, removing the current subjective criteria and directing that evaluation be based on ankylosis (under diagnostic code 5270) or limitation of motion (under diagnostic code 5271), whichever results in a higher evaluation, combining this evaluation with an evaluation for pain under § 4.59 when appropriate. We propose to retain the 20 percent minimum evaluation level.

Anatomical Loss and Loss of Use of Hands and Feet

The current list of potential combinations of disabilities under diagnostic codes 5104 through 5111 is incomplete because it does not include ''loss of use of one hand and anatomical loss of the other hand'' or ''loss of use of one foot and anatomical loss of the other foot.'' We propose to combine ''Anatomical loss of both hands'' (diagnostic code 5106) and ''Loss of use of both hands'' (diagnostic code 5109) into one code, diagnostic code 5106, titled ''Anatomical loss or loss of use of one hand and anatomical loss or loss of use of the other hand.'' Similarly, we propose to combine ''Anatomical loss of both feet'' (diagnostic code 5107) and ''Loss of use of both feet'' (diagnostic code 5110) into one code, diagnostic code 5107, titled ''Anatomical loss or loss of use of one foot and anatomical loss or loss of use of the other foot.'' These changes will make diagnostic codes 5109 and 5110 redundant, and we propose to delete them. Finally, we propose to combine ''Anatomical loss of one hand and loss of use of one foot'' (diagnostic code 5104), ''Anatomical loss of one foot and loss of use of one hand'' (diagnostic code 5105), ''Anatomical loss of one hand and one foot'' (diagnostic code 5108), and ''Loss of use of one hand and one foot'' (diagnostic code 5111) into one code, diagnostic code 5104, titled ''Anatomical loss or loss of use of one hand and anatomical loss or loss of use of one foot.'' Diagnostic codes 5105, 5108, and 5111 will then be redundant, and we propose to delete them.

Other Amputations

Diagnostic codes 5123, 5124, and 5125 currently pertain to amputation of the forearm. Under diagnostic codes 5123, ''Forearm, amputation of, above insertion of pronator teres'' and 5124, ''Forearm, amputation of, below insertion of pronator teres,'' we propose to add the alternative titles of ''short, below elbow amputation'' and ''long, below elbow amputation,'' respectively, since these are terms commonly used in medical practice to distinguish levels of amputation. The insertion of the pronator teres is located at the middle one-third of the lateral surface of the radius, and, for the sake of clarity, we also propose to add that definition to the titles of diagnostic codes 5123 and 5124. We propose to revise the current title of diagnostic code 5125 from ''Hand, loss of use of'' to ''Wrist disarticulation,'' because a wrist disarticulation procedure results in anatomical loss of the hand.

Under the subheading ''Multiple finger amputations,'' we propose to edit paragraphs (a) through (f) and rename them notes, numbered one through five, consistent with the way we have designated rating instructions throughout this section. We also propose to move the notes from their current position following the diagnostic codes for multiple finger amputations to the beginning of the applicable diagnostic codes, for clarity and ease of reference. The last of these paragraphs defines loss of use of the hand. This is a duplication of § 3.350 (a)(2), and we propose to delete it as unnecessary. We propose to change the term middle finger to long finger for disabilities resulting from finger amputations and ankylosis of the fingers because this is the current medical term for this finger.

We propose to retitle diagnostic code 5160, now titled ''Disarticulation, with loss of extrinsic pelvic girdle muscles'' under amputation of thigh, to ''Disarticulation of hip, with loss of extrinsic pelvic girdle muscles'' for the sake of clarity about the site of amputation.

We propose to make editorial changes in the language of diagnostic codes 5163, 5164, and 5165, regarding leg amputations and diagnostic codes 5172 and 5173, regarding amputation of toes, for clarity. No substantive change is intended.

Shoulder and Arm

Ankylosis of the shoulder is currently rated under diagnostic code 5200, which is titled ''Scapulohumeral articulation, ankylosis of.'' Since the common term for the shoulder joint is the glenohumeral, rather than the scapulohumeral joint, we propose to change the heading of diagnostic code 5200 and other references to the joint accordingly. For the sake of clarity, we propose to change the word ''piece'' to ''unit'' when referring to the scapula and humerus in the evaluation criteria under diagnostic code 5200. The current criteria for ankylosis of the shoulder are 50 and 40 percent (dominant and nondominant sides) for unfavorable ankylosis with abduction limited to 25 degrees from side; 40 and 30 percent for intermediate ankylosis between favorable and unfavorable; and 30 and 20 percent for favorable ankylosis, with abduction to 60 degrees, can reach mouth and head.

The consultants suggested an 80-percent evaluation for unfavorable ankylosis, defined as abduction limited to 25 degrees from side, and a 40-percent evaluation for favorable ankylosis, defined as abduction of 60 degrees, can reach mouth and head. The consultants suggested removing the intermediate level because ankylosis is either favorable or unfavorable and suggested elevating the unfavorable ankylosis to 80 percent and the favorable to 40 percent based on the same criteria for favorable and unfavorable as the current criteria. We consulted further with the VHA Orthopedic Committee, however, and the Committee indicated that an intermediate level is possible. We therefore propose to retain evaluations of 40 and 30 percent for intermediate ankylosis, which we propose to define as ankylosis with abduction limited to between 26 and 59 degrees, and to retain evaluations of 50 and 40 percent for unfavorable ankylosis and 30 and 20 percent for favorable ankylosis, retaining the current criteria. This

would encompass those with limited motion of a degree that does not meet the criteria for either favorable or unfavorable. We also do not propose to adopt the higher levels suggested, as the consultants did not specify why they believe this condition is more disabling than it is currently evaluated.

We propose to change the title of diagnostic code 5201 from ''Arm, limitation of motion of'' to ''Limitation of active abduction of shoulder'' to indicate that the criteria under this code are limited to the evaluation of active abduction of the shoulder rather than limitation of arm motion in general. The consultants suggested no other change. We propose no change other than to objectively specify in degrees the movements currently designated by reference to side and shoulder positions, that is, by changing ''Midway between side and shoulder'' to ''to between 26 degrees and 89 degrees from side'' and changing ''At shoulder level'' to ''to shoulder level (90 degrees)''. This more objective measurement of the disability will promote more consistent evaluations.

Diagnostic code 5202 is currently called ''Humerus, other impairment of.'' For the sake of clarity, we propose to change the title to ''Residuals of fracture of humerus and residuals of dislocation of glenohumeral (shoulder) joint,'' because these are the specific conditions covered under this diagnostic code. In the current evaluation criteria, the term ''flail shoulder'' is a parenthetical expression after loss of head of humerus. However, we propose to delete the reference to flail shoulder joint because this is a neurological condition due to paralysis of shoulder motion from such things as brachial plexus or other nerve injuries or poliomyelitis, and is properly evaluated under the neurological section of the rating schedule. The level of evaluation for the paralysis would depend on the extent of loss of function. The term ''false flail joint'' is currently a parenthetical expression after nonunion of a fracture of the humerus. That term is rarely used medically, and we propose to delete it and replace it with ''nonunion of head of humerus with motion at fracture site'' because that phrase describes the disability in correct and commonly used medical terms. The current criteria include evaluation percentages of 80 and 70 (for dominant and nondominant side) for loss of head of humerus (flail shoulder), 60 and 50 for nonunion of humeral head (false flail joint), and 50 and 40 for fibrous union of humeral head. We propose to reduce the rating for loss of the head from 80 and 70 to 60 and 50 percent because the consultants stated that this impairment is more amenable to treatment under modern medical techniques. We propose to retain the same evaluation percentages for nonunion and fibrous union.

This diagnostic code (5202) also contains criteria for evaluating recurrent dislocation at the scapulohumeral (glenohumeral) joint, providing 30 and 20 percent for frequent episodes and guarding of all arm movements and 20 and 20 percent for infrequent episodes and guarding of movement only at shoulder level. We propose to change the subtitle to ''Recurrent dislocation of glenohumeral (shoulder) joint,'' which is the more common, current term, and to retain the percentage evaluations for frequent and infrequent episodes. We do, however, plan to specify what is meant by frequent (every 2 months or more frequently) and infrequent (less often than every 2 months, but at least once per year) episodes and to add a 10-percent level for evaluation when there has been at least one recurrence. We propose to add guarding of external rotation to the evaluation of infrequent dislocations under this code because this is a clearer description of the disability. These criteria are more clearly defined and will promote consistency.

Diagnostic code 5202 also includes evaluation criteria for malunion of the humerus, with evaluations of 30 and 20 percent for ''marked'' and 20 and 20 percent for ''moderate.'' The consultants indicated that malunion is disabling only if it is symptomatic or there is functional impairment. We therefore propose to follow their recommendation and provide an evaluation level of 30 and 20 percent if the malunion is symptomatic and there is more than 45 degrees of angulation in the anterior-posterior plane or varus-valgus plane and a level of 20 percent if the malunion is symptomatic and there is 30 to 45 degrees of angulation in the anterior-posterior plane or varus-valgus plane. These criteria are less subjective and better define the degree of deformity and indicate that symptoms are required. These changes would promote consistency of evaluations.

Current diagnostic code 5203, ''Clavicle or scapula, impairment of,'' provides evaluations of 20 and 20 percent (for dominant and nondominant sides) for dislocation, 20 and 20 percent for nonunion with loose movement, 10 and 10 percent for nonunion without loose movement, and 10 and 10 percent for malunion. The consultants said that the impairments from these conditions are less than current criteria would indicate, and suggested a 10-percent evaluation for any of the following: acromioclavicular separation with chronic pain, sternoclavicular separation with chronic pain, and nonunion of the clavicle and scapula with chronic pain. Because their suggested criteria were no more objective than the current criteria, we consulted with the VHA Orthopedic Committee, who suggested the following more objective criteria, which we propose to adopt: For resection of the end of the clavicle; nonunion of the clavicle or scapula; or malunion of the clavicle or scapula with skin breakdown, skin irritation, or thoracic outlet syndrome, 20 and 10 percent; for dislocation of the acromioclavicular joint with pain and osteoarthritis; or painful sternoclavicular anterior dislocation, 10 and 10 percent; for malunion of the clavicle or scapula zero and zero percent unless skin breakdown, skin irritation or thoracic outlet syndrome is present. The thoracic outlet is an area behind each clavicle where an artery, a vein, and nerves cross over the first rib. Upper extremity symptoms, known as the thoracic outlet syndrome, can develop on one or both sides when the nerves or blood vessels in this area are compressed by any of several causes, including an abnormal position or shape of the clavicle after an injury. The symptoms may include pain, numbness, tingling, weakness, and aching of an arm or hand, and there also may be swelling and enlarged veins.

Untreated sternoclavicular posterior dislocations will be evaluated separately, on the basis of complications, such as from pressure on blood vessels or trachea. We propose to add a note stating that these criteria encompass pain, so an evaluation under diagnostic code 5203 is not to be combined with an evaluation for pain (under § 4.59). We propose to add a second note to explain what is meant by a thoracic outlet syndrome and to indicate that it can be separately evaluated if not used to support an evaluation under diagnostic code 5203. These objective criteria are more clearly related to the likely functional impairment of these various conditions, based on orthopedic experience.

We propose to add a new diagnostic code, 5204, for ''Rotator cuff dysfunction and impingement syndrome,'' two common shoulder disabilities that warrant a separate diagnostic code because they may currently be rated under a variety of existing codes and therefore may not be rated consistently. The rotator cuff is a group of 4 muscles (the subscapularis, supraspinatus, infraspinatus, and teres minor, all originating from the scapula)

and their tendons that surround the glenohumeral (shoulder) joint. These structures stabilize the shoulder joint and allow the arm to rotate (''Essentials of Musculoskeletal Care'' 114 (Robert K. Snider, M.D., ed., 1999)). The rotator cuff may become symptomatic as a result of bursitis, tendinitis, or a tear or sprain affecting structures in the area. Both repetitive activity and acute injury can lead to rotator cuff damage. The major symptoms are pain, weakness, and loss of motion. Rotator cuff dysfunction is often associated with impingement syndrome, which is a condition in which the acromion or coracoid process of the scapula, the coracoacromial ligament, and the acromioclavicular joint press on the underlying bursa, biceps, tendon, and rotator cuff (Snider, 108). Impingement may lead to rotator cuff damage. Pain, weakness, and loss of function are possible outcomes of impingement syndrome. Because the effects of rotator cuff dysfunction and impingement syndrome are similar, and they often occur together, they can be rated under the same set of criteria. The consultants suggested adding impingement syndrome to the schedule with a single evaluation level of 10 percent for either side, based on the presence of the diagnosis and a positive impingement sign (a clinical test of arm movement that indicates the impingement syndrome is present). We propose to follow their suggestion for a 10-percent evaluation but to add an evaluation level of 20 and 20 percent for those with limitation of motion of internal rotation, external rotation, flexion, and abduction, since this limitation of motion would be more disabling than the presence of a positive impingement sign alone would warrant. Furthermore, since limitation of abduction alone may be rated under diagnostic code 5201 (limitation of active abduction of shoulder) at higher levels, we propose to add a note directing that evaluation be made under diagnostic code 5201 if a higher evaluation could be assigned based on limitation of abduction, but this evaluation may not be combined with an evaluation under diagnostic code 5204. We also propose to add a note directing the rater to combine an evaluation based on the criteria under diagnostic code 5204 with an evaluation for pain under § 4.59 when appropriate, since pain may be the predominant symptom. These criteria would take into account the usual manifestations of these conditions in an objective way, and also take into account any pain that is present under a standardized method of evaluation.

Elbow and Forearm

Current diagnostic code 5205, ''Elbow, ankylosis of,'' has evaluation levels of 60 and 50, 50 and 40, and 40 and 30 percent, based on whether the ankylosis is unfavorable, at an angle of less than 50 degrees or with complete loss of supination or pronation; intermediate, at an angle of more than 90 degrees or between 70 degrees and 50 degrees; or favorable, at an angle between 90 degrees and 70 degrees. The consultants recommended that all degrees of elbow ankylosis be rated at 80 percent because elbow ankylosis is very disabling regardless of position and it is impossible to distinguish between levels of disability. The VHA Orthopedic Committee also felt that the current criteria for unfavorable ankylosis would be equivalent to an above elbow amputation and agreed that a rating of 80 (for dominant) and 70 (for non-dominant) percent for unfavorable elbow ankylosis, at an angle of less than 50 degrees, or with complete loss of supination or pronation, is appropriate. They also felt that the intermediate and favorable ankylosis evaluations should be elevated, but not to the level that is equivalent to an amputation above the elbow. We therefore propose to retain the same criteria for elbow ankylosis, with editorial changes, but to elevate the evaluations for each level to 80 and 70 percent for unfavorable, 60 and 50 percent for intermediate, and 50 and 40 percent for favorable ankylosis. These evaluation levels are more consistent with the extent of disability these degrees of ankylosis produce, based on orthopedic experience and judgment.

Diagnostic codes 5206, 5207, and 5208 currently refer to limitation of flexion and extension of the forearm. Because extension and flexion are actually functions of the elbow joint, we propose to change the word ''forearm'' to ''elbow'' in the headings of diagnostic codes 5206, 5207, and 5208. We propose to retain the same criteria except for two nonsubstantive changes under diagnostic code 5207 that we are making because of language that has been a source of confusion. We propose to change the phrase ''extension limited to X degrees'' to ''extension is limited to minus X degrees (lacks X degrees of full extension)'' because full extension is zero degrees, and if less than full extension is possible, a negative number is required, since the range of extension is zero to minus 145 degrees. For example, if there is 110 degrees of limitation of extension (or, extension is limited by 110 degrees), it means that only minus 35 degrees of full extension is possible or that extension is limited to minus 35 degrees. For the sake of clarity, we propose to revise this language, using zero degrees as the reference point for full extension, as Plate I indicates is correct. Also currently, a 10-percent evaluation is provided both for limitation of extension to 60 degrees and for limitation of extension to 45 degrees. We propose to revise the criteria for a 10-percent level of evaluation to encompass both, by proposing a 10-percent evaluation if extension is limited to between minus 45 and minus 74 degrees (extension lacks at least 45 but less than 75 degrees of full extension). This eliminates the need for two sets of criteria for the 10-percent evaluation level. Similarly, for diagnostic code 5208, we propose to change the current language of the title (and evaluation criteria) from ''Forearm, flexion limited to 100 degrees and extension to 45 degrees'' to ''Flexion of elbow is limited to 100 degrees, and extension is limited to minus 45 degrees (lacks 45 degrees of full extension).

Diagnostic code 5209, ''Elbow, other impairment of,'' calls for evaluations of 60 and 50 percent for a flail joint, and of 20 and 20 percent for joint fracture, with marked cubitus varus or cubitus valgus deformity or with ununited fracture of head of radius. The consultants recommended no changes. However, we propose to remove the criterion of ''flail joint'' from this section, since it refers to complete paralysis at the elbow, a neurologic condition that would be more appropriately evaluated under § 4.124a in the neurologic portion of the rating schedule. The specific diagnostic code and evaluation would depend on the exact findings. Complete paralysis of the shoulder and elbow due to upper radicular (fifth and sixth cervical nerves) impairment would warrant a 70- or 60-percent evaluation (for dominant and non-dominant side, respectively). If only the middle radicular cervical nerve group is impaired, the evaluation for complete paralysis of adduction, abduction, and rotation of arm, plus flexion of elbow and extension of wrist would also warrant a 70-or 60-percent evaluation. It is unlikely that elbow movements alone would be completely paralyzed in a given situation because the same nerves that innervate the muscles about the elbow innervate muscles that affect the movement of other parts of the arm. The VHA Orthopedic Committee stated that the normal position of the elbow is 10–15 degrees of valgus and that any degree of cubitus varus (*i.e.*, any degree of varus greater than zero degrees) will greatly

interfere with positioning of the hand and would be considered ''marked.'' They also indicated that marked cubitus valgus essentially doesn't occur. They also suggested we add an evaluation level of 10 percent for excision of the radial head and add malunion of radial head at the 20-percent level. Based on this information, we propose to revise the criteria for the 20 and 20 percent level to ''Joint fracture with cubitus varus deformity; or ununited or malunited head of radius' and to add a level of 10 and 10 percent for ''excised radial head.''

We propose no change to diagnostic code 5210, ''Radius and ulna, nonunion of with flail false joint'' except for revising the title to ''Nonunion of radius and ulna, with motion at the fracture site,'' since the term ''false flail joint'' is seldom used medically, and the revised title would adequately describe the disability.

We propose to revise the criteria for diagnostic codes 5211, ''Ulna, impairment of'' and 5212, ''Radius, impairment of,'' for the sake of clarity and in order to provide guidance on evaluating nonunion in the upper half of the ulna or the lower half of the radius with false movement when there is either deformity or loss of bone substance, but not both. Currently 40 or 30 percent is assigned under diagnostic code 5211 for nonunion in the upper half of the ulna with false movement with loss of bone substance and marked deformity, and 30 or 20 percent is assigned for nonunion in the upper half of the ulna without loss of bone substance or deformity. There is no guidance on evaluating an intermediate condition where either deformity or loss of bone substance, but not both, is present. We propose to retain the 40 or 30 percent with the same criteria, but to assign 30 or 20 percent if there is either deformity or loss of bone substance and 20 percent if neither deformity nor loss of bone substance is present. Providing a third method of evaluating nonunion in the upper half of the ulna would promote consistent evaluations for those who have the intermediate level of disability.

We propose to provide a similar intermediate evaluation under diagnostic code 5212, with 30 or 20 percent assigned if there is nonunion of the lower half of the radius with false movement and either deformity or loss of bone substance and 20 percent if neither deformity nor loss of bone substance is present. For both diagnostic code 5211 and 5212, we propose to change the current criterion for 10 percent from ''Malunion of, with bad alignment'' to ''Malunion of, symptomatic'' because disability from these types of injuries is related to function rather than position of the joint. We also propose to add a note under each diagnostic code (5211 and 5212) directing that, alternatively, malunion (of the ulna or the radius) be evaluated based on limitation of motion if that would result in a higher evaluation. We also propose, for both diagnostic codes 5211 and 5212, to remove the word ''marked'' which currently precedes ''deformity'' in the evaluation criteria at the 40- and 30-percent level. This disability level will be distinguished from the next lower one by whether or not both deformity and loss of bone substance are present.

Impairment of supination and pronation of forearm, diagnostic code 5213, is currently evaluated at 40 or 30 percent (for dominant and nondominant side, respectively) if there is bone fusion and the hand is fixed in supination or hyperpronation; at 30 or 20 percent if the hand is fixed in full pronation; and at 20 percent if the hand is fixed near the middle of the arc or moderate pronation. For limitation of pronation, 30 or 20 percent is assigned if motion is lost beyond the middle of the arc, and 20 percent is assigned for motion lost beyond the last quarter of the arc, the hand does not approach full pronation. For limitation of supination, 10 percent is assigned for supination to 30 degrees or less. We propose to clarify the evaluation criteria by specifying in degrees what is meant by currently used terms such as ''hyperpronation'', ''Motion lost beyond middle of arc,'' etc., in order to remove any ambiguity. We propose that when there is bone fusion, an evaluation of 40 or 30 percent be assigned when the hand is fixed in supination (between one and 85 degrees of supination) or in hyperpronation (in greater than 80 degrees of pronation); of 30 or 20 percent be assigned when the hand is fixed in full pronation (at 80 degrees of pronation); and of 20 percent when the hand is fixed at 40 to 45 degrees of pronation. We propose to evaluate limitation of pronation at 30 or 20 percent when pronation is limited to 40 degrees and at 20 percent when pronation is limited to 60 degrees. We propose to evaluate limitation of supination at 10 percent when supination is limited to 30 degrees. We also propose to edit the note that currently says that in all forearm and wrist injuries, codes 5205 through 5213, multiple impaired finger movements due to tendon tie-up, muscle or nerve injury, are to be separately rated and combined not to exceed rating for loss of use of hand. We propose instead to have the note say that evaluations for forearm and wrist injuries, diagnostic codes 5205 through 5213, will be combined with separate evaluations for limitation of motion of the fingers, subject to the provisions of § 4.68 (which limits the combined evaluation of musculoskeletal and associated neurologic disabilities of an extremity).

Wrist

The consultants suggested no changes for diagnostic code 5214, ''Wrist, ankylosis of,'' except for suggesting that we add a second note stating that bilateral wrist ankyloses are more functional if one wrist is in a flexed position and the other is in an extended position. We propose no change based on this comment. We propose to continue rating each wrist separately as though only one is impaired, a method that would in general be more beneficial to the veteran, and a method that the VHA Orthopedic Committee believe to be appropriate. It seems unlikely, in any case, that more than a few veterans would be service-connected for ankylosis of both wrists. There is currently a note under 5214 stating that extremely unfavorable ankylosis will be rated as loss of use of hands under diagnostic code 5125, but the note does not define ''extremely unfavorable ankylosis.'' We propose to remove this instruction because there is already a provision in § 3.350 (a)(2) of this chapter (the criteria for determining when loss of use of a hand or foot is present) that indicates that special monthly compensation is payable when no effective function of the hand remains. This applies, whatever the cause, and need not be repeated here. We also propose editorial changes for clarity.

We propose to revise the evaluation criteria under diagnostic code 5215, ''Wrist, limitation of motion of,'' by changing the current criteria for a 10-percent evaluation, ''Dorsiflexion less than 15 degrees'' or ''Palmar flexion limited in line with forearm'' to ''Dorsiflexion limited to 14 degrees, or palmar flexion limited to zero degrees (no palmar flexion possible)''. These are clarifying, rather than substantive, changes.

Upper Extremity Digit Ankylosis and Limitation of Motion, Fractures of Hand and Feet Phalanges, Metacarpals, and Metatarsals

Revised criteria and guidance for the evaluation of upper extremity digit ankylosis and limitation of motion (diagnostic codes 5216 through 5227) will be addressed in a separate rulemaking, so they are not being addressed in this proposed rule.

There are currently no diagnostic codes in the rating schedule for the evaluation of disability due to fractures of the phalanges of the hand or foot or of the metacarpals of the hand or carpals of the wrist. These disabilities must now be rated by analogy to other conditions. Since they are such common injuries in veterans, we propose to add three new diagnostic codes: 5231 for residuals of fracture of a phalanx of finger or thumb, 5232 for residuals of fracture of a carpal or metacarpal bone, and 5233 for residuals of fracture of a phalanx of a toe (residuals of fractures of the tarsals and metatarsals can be evaluated under diagnostic code 5283, ''Malunion or nonunion of tarsal or metatarsal bones (except talus and calcaneus)''). We propose that each of these fractures be evaluated based on the specific residuals, such as limitation of motion or ankylosis, under the appropriate code(s), to be combined with an evaluation for pain under § 4.59 when appropriate.

Hip and Femur

Diagnostic code 5250, ''Hip, ankylosis of,'' currently provides for an evaluation of 90 percent if the ankylosis is extremely unfavorable, with the foot not reaching the ground and crutches necessary; an evaluation of 70 percent if the ankylosis is intermediate; and an evaluation of 60 percent if the ankylosis is favorable, in flexion at an angle between 20 degrees and 40 degrees, with slight adduction or abduction. The consultants suggested that we remove the intermediate level because there is no middle ground with this disability. They also suggested we revise the criteria for favorable ankylosis to ''in slight flexion, at an angle between 20 degrees and 40 degrees and minimal adduction or abduction, not requiring assistive devices.'' The VHA Orthopedic Committee indicated that unfavorable ankylosis would be present when there is more than 60 degrees of flexion so that the foot cannot reach the ground and crutches are required. We propose to adopt both suggestions in part and make the evaluation criteria more specific. For a 90-percent evaluation, we propose that the criteria be ''Unfavorable ankylosis, meaning fixed in more than 60 degrees of flexion so that the foot cannot reach the ground, and crutches are required for ambulation.'' We propose that the criteria for a 60-percent evaluation be ''Favorable ankylosis, meaning fixed in 20 degrees to 39 degrees of flexion, in slight adduction or abduction, and assistive devices are not required.'' These criteria are similar to the current criteria and the criteria recommended by the consultants. This leaves ankylosis in flexion at an angle between 40 and 60 degrees undefined, and we therefore propose to retain the 70-percent level of evaluation with criteria of ''Intermediate ankylosis, meaning fixed in 40 to 60 degrees of flexion, and assistive devices may be needed.''

We propose to change the title of diagnostic code 5251 from ''Thigh, limitation of extension of'' to ''Limitation of extension of hip'; the title of diagnostic code 5252 from ''Thigh, limitation of flexion of'' to ''Limitation of flexion of hip'; and the title of 5253 from ''Thigh, impairment of'' to ''Limitation of abduction, adduction, or rotation of hip'' to reflect more clearly that these diagnostic codes refer to movement at the hip joint.

The current evaluation criteria for diagnostic code 5251, ''Thigh, limitation of extension of,'' provide a single level of evaluation of 10 percent for limitation of extension of the thigh to five degrees. The consultants recommended no change. However, we propose to revise the criteria because the current criterion for a 10-percent evaluation does not take into account the fact that some individuals have only 10 degrees of extension normally. According to the VHA Orthopedic Committee, comparing the affected and non-affected sides would be a better indicator of the extent of disability, because some people have a small degree of limitation of extension with no symptoms. We therefore propose to assign a 10-percent evaluation if there is limitation of extension of the affected hip that is at least 10 degrees more than the limitation of extension of the non-affected hip, and there is a positive Thomas test (test for flexion contracture of the hip). The normal range of motion of the hip for flexion and extension is zero degrees (full extension) to 125 degrees (full flexion). A Thomas test shows the degree of flexion deformity (contracture) of a hip and confirms the limitation of extension (which is the equivalent of a flexion contracture, since extension is always limited to less than zero if there is a flexion contracture). In the Thomas test, the patient is supine (lying on back), with one leg flexed so that the knee touches the chest, and the angle between the other hip and the examination table represents the degree of flexion deformity or contracture (limitation of extension) that is present.

We propose no change in the criteria for limitation of flexion of the hip under diagnostic code 5252. We propose no change in the criteria for limitation of abduction, adduction, or rotation of the hip under diagnostic code 5253, except for editorial changes.

Diagnostic code 5254 is currently titled ''Hip, flail joint'' with a single evaluation level of 80 percent based solely on the diagnosis. ''Flail joint'' is an obsolete term, and we propose to modernize the title to ''Resection arthroplasty of hip (removal of femoral head and neck without replacement by a prosthesis)'', as recommended by the consultants, and to continue a single evaluation of 80 percent for the condition.

We propose to change the title of diagnostic code 5255 from ''Femur, impairment of'' to ''Residuals of fracture of femur'' because that is the condition evaluated under this diagnostic code. This diagnostic code currently includes evaluation criteria for fractures of the shaft or anatomical neck with nonunion, for fracture of the surgical neck with a false joint, and for malunion with knee or hip disability. Fracture of the shaft or anatomical neck of the femur with nonunion, with loose motion (spiral or oblique fracture) is currently evaluated at 80 percent. If there is nonunion without loose motion and weightbearing is preserved with the aid of a brace, it is evaluated at 60 percent. Sixty percent is also assigned for fracture of the surgical neck of the femur with a false joint. Malunion of a fracture of the femur is currently rated at 30 percent if there is malunion and marked knee or hip disability, at 20 percent if there is moderate knee or hip disability, and at 10 percent if there is slight knee or hip disability. These criteria contain subjective adjectives such as ''marked'' and ''moderate'' and do not provide the rater with objective criteria for evaluating the disability.

The consultants suggested a reorganization and expansion of the types of fractures and residuals, and we propose to do that, as well as to remove the subjective language. They also pointed out that these conditions respond well to treatment, and impairment under current treatment is not as great as in past years, so some reductions in percentage levels are warranted. We propose to follow their recommendations. We propose that a fracture of the femoral neck, intertrochanteric area, or shaft be evaluated at 60 percent if there is symptomatic malunion or symptomatic nonunion; at 40 percent if there is asymptomatic nonunion, or if there is a fracture of the femoral head or subcapital area with excision of 25 percent or more of the weightbearing portion; and at 30 percent if there is a fracture of the femoral shaft with symptomatic malunion and either more

than 10 degrees of angulation in the varus-valgus plane or more than 15 degrees of angulation in the anterior-posterior plane. We also propose to add two notes. The first directs that a fracture of the femoral head or subcapital area with excision of less than 25 percent of the weightbearing portion be evaluated as aseptic necrosis under diagnostic code 5265. The second defines malunion of an intertrochanteric fracture as having a varus deformity, shortening, or rotation. These criteria are based on modern medical treatment and focus on the femoral impairment. Currently, additional disability of the knee or hip resulting from a femoral fracture is evaluated at 10, 20, or 30 percent, depending on whether the impairment is mild, moderate, or marked. These criteria are subjective and therefore difficult to apply consistently, and any hip or knee impairment can be separately rated as a secondary condition to the femoral shaft fracture. Therefore it is unnecessary to take into consideration impairment of the hip or knee in evaluating femoral shaft fracture, and we propose to remove those criteria.

Knee and Lower Leg

Ankylosis of the knee, diagnostic code 5256, is currently evaluated at 60 percent if the ankylosis is extremely unfavorable, in flexion at an angle of 45 degrees or more; at 50 percent if the ankylosis is in flexion between 20 and 45 degrees; at 40 percent if the ankylosis is in flexion between 10 and 20 degrees; and at 30 percent if the ankylosis is at a favorable angle in full extension, or flexion between zero and 10 degrees. We propose to revise the criteria to avoid the overlap of the required degrees of flexion in the current criteria by making the required flexion be more than 45 degrees for 60 percent; between 21 and 45 degrees for 50 percent; between 11 and 20 degrees for 40 percent; and in full extension, or in flexion between zero and 10 degrees for 30 percent.

Diagnostic code 5257 is currently titled ''Knee, other impairment of,'' but the criteria are based only on the extent of recurrent subluxation or lateral instability. Thirty percent is assigned if the condition is ''severe,'' 20 percent if it is ''moderate,'' and 10 percent if it is ''slight.'' We propose to change the title to ''Knee instability'' because this more precisely describes the content. The consultants recommended that evaluations be based on whether the instability is correctable by bracing and the extent to which it interferes with activities of daily living and athletic activities, such as running and jumping. We propose to follow this recommendation, providing a 30-percent evaluation if there is documented instability that is not correctable by bracing and that interferes with activities of daily living; a 20-percent evaluation if there is documented instability that is correctable with bracing, but that interferes at times with activities of daily living and that prevents activities such as running and jumping; and a 10-percent evaluation if there is documented instability that is correctable by bracing and that does not interfere with activities of daily living, but at times may interfere with activities such as running and jumping. We also propose to add a note directing that an evaluation under diagnostic code 5257 may be combined with an evaluation for pain (under § 4.59) when appropriate. The proposed criteria are more objective than the current criteria, a change that will promote consistent evaluations.

Diagnostic code 5258 is currently titled ''Cartilage, semilunar, dislocated, with frequent episodes of 'locking,' pain, and effusion into the joint''. It provides a single evaluation level of 20 percent. The consultants suggested we change the title of diagnostic code 5258 to ''Meniscus, tear with episodes of give way, locking and/or swelling''. They suggested a single evaluation level of 10 percent, because they felt the impairment is not as great as in the original schedule. Diagnostic code 5259 is currently titled ''Cartilage, semilunar, removal of, symptomatic,'' with a single evaluation level of 10 percent. The consultants suggested changing the condition to ''Patellofemoral subluxation or dislocation'' and to base evaluation on the frequency of episodes.

We propose to follow their suggestion in part by combining meniscus injuries, pre-or post-operatively, under diagnostic code 5258 and by changing the title to ''Injury of meniscus (semilunar cartilage) of knee (pre-or post-operatively),'' which is both a more current medical term and more reflective of the content. We also propose to provide a 20-percent evaluation for meniscus injury with episodes of giving way, locking, or joint effusion that interfere at times with activities of daily living and prevent activities such as running and jumping, and a 10-percent evaluation for meniscus injury with episodes of giving way, locking, or joint effusion that do not interfere with activities of daily living, but that at times interfere with activities such as running and jumping. We propose that evaluation alternatively be based on instability, degenerative arthritis, *etc.,* depending on the specific findings, under the appropriate diagnostic code, because these are possible effects of meniscus injury or surgery. We also propose to add a note directing that an evaluation under diagnostic code 5258 be combined with an evaluation for pain (under § 4.59) when appropriate. Diagnostic code 5259 would be unnecessary under this reorganization, and we propose to remove it.

Diagnostic codes 5260 and 5261 currently pertain to limitation of flexion of the leg and limitation of extension of the leg, respectively. Because the terms extension and flexion are functions of the knee joint, we propose to change the word ''leg'' to ''knee'' in the titles of diagnostic codes 5260 and 5261. We propose to retitle diagnostic code 5260 ''Limitation of flexion of knee.'' Flexion of the knee limited to 15 degrees is currently evaluated at 30 percent, flexion limited to 30 degrees is evaluated at 20 percent, flexion limited to 45 degrees is evaluated at 10 percent, and flexion limited to 60 degrees is evaluated at zero percent. The consultants pointed out that 30, 60, and 90 degrees are the important angles of measurement and are better measures of impairment than those in the current schedule. The VHA Orthopedic Committee agreed. We therefore propose to provide a 30-percent evaluation if flexion is limited to 30 degrees, a 20-percent evaluation if it is limited to 60 degrees, and a 10-percent evaluation if it is limited to 90 degrees.

Under diagnostic code 5261, currently ''Leg, limitation of extension of,'' which we propose to retitle ''Limitation of extension of knee,'' current evaluations are 50 percent if extension is limited to 45 degrees, 40 percent if it is limited to 30 degrees, 30 percent if it is limited to 20 degrees, 20 percent if it is limited to 15 degrees, 10 percent if it is limited to 10 degrees, and zero percent if it is limited to 5 degrees. The consultants pointed out that the three relevant ranges of measurement for limitation of extension are lack of extension of 5 to 15 degrees, lack of extension of 15 to 30 degrees, and lack of extension of 30 degrees or more. We therefore propose to provide evaluation levels of 50 percent if extension is limited to more than minus 30 degrees (lacks more than 30 degrees of full extension), 30 percent if extension is limited to between minus 16 and 30 degrees (lacks 16 to 30 degrees of full extension), and 10 percent if extension is limited to between minus 5 and 15 degrees (lacks 5 to 15 degrees of full extension). Reducing the number of levels of evaluation for limitation of flexion and extension to three will help simplify the

rating process and will be in accord with the consultants' recommendation about relevant ranges. These levels will also be clearer in reference to Plate II, which shows the range of motion of the knee as zero to 140 degrees (which includes both flexion and extension of the knee), and which therefore requires that less than full extension be expressed as a negative number.

Diagnostic code 5262, Tibia and fibula, impairment of, currently has evaluation criteria pertaining to residuals of fracture of the tibia or fibula. Evaluations are 40 percent if there is nonunion, with loose motion, requiring a brace, 30 percent if there is malunion with marked knee or ankle disability, 20 percent if there is malunion with moderate knee or ankle disability, and 10 percent if there is malunion with slight knee or ankle disability. The consultants suggested no change. However, we propose changes in order to eliminate the subjective terms ''marked,'' ''moderate,'' and ''slight'' and the indefinite term ''ankle or knee disability.'' We propose to use evaluation criteria similar to those we are proposing for fractures of the femur. We propose a 40-percent evaluation if there is nonunion, with loose motion, requiring a brace; a 30-percent evaluation if there is an asymptomatic nonunion; a 20-percent evaluation if there is a symptomatic malunion with either more than 10 degrees of angulation in the varus-valgus plane or more than 15 degrees of angulation in the anterior-posterior plane; and a 10-percent evaluation if there is a symptomatic malunion with neither more than 10 degrees of angulation in the varus-valgus plane nor more than 15 degrees of angulation in the anterior-posterior plane. These would provide more objective criteria to promote consistent evaluations. We also propose to revise the title to ''Nonunion or malunion of fracture of tibia or fibula,'' in order to better identify the content of this diagnostic code.

We propose to delete diagnostic code 5263, ''Genu recurvatum,'' since the consultants said this diagnosis is no longer used. Some degree of genu recurvatum (which means backward curving or hyperextended knee) is normal in females, and when acquired, is a finding that occurs as part of other conditions, such as nerve paralysis or osteoarthritis, rather than being a primary diagnosis or disability. Its evaluation would be encompassed by the evaluation for the primary underlying condition.

Aseptic Necrosis of Femoral Head

We propose to add a new diagnostic code, 5265, for aseptic necrosis (or avascular necrosis or osteonecrosis) of the femoral head. The consultants recommended this addition and suggested criteria similar to those we propose, although they used subjective terms that we have replaced with more objective criteria. For example, they suggested a 100-percent evaluation for a ''severe'' level with ''severe'' pain requiring use of ambulatory support, a 50-percent evaluation for a ''moderate'' level with ''moderate'' pain aggravated by activity and requiring intermittent ambulatory support, a 10-percent level for a ''mild'' level with previous severe or moderate disease that has stabilized, without collapse of the femoral head (at least 2 years after onset) and minimal pain; and a zero-percent evaluation for a ''minimal'' level with previous severe or moderate disease that has stabilized (at least 2 years after onset) with minimal residual deformity. They felt that if there is mild or minimal aseptic necrosis, there should also be an assessment of limitation of motion, with the higher rating being given.

Aseptic necrosis (or avascular necrosis or osteonecrosis) of the hip is seen commonly if there has been interference of the blood supply to the head of the femur due to trauma, metabolic disease, vascular disease, etc., with resulting bone death of part or all of the femoral head. Eventually, the affected bone collapses. It is likely that it would currently be rated analogous to fracture of the femur (diagnostic code 5255), which has current evaluations ranging from 10 to 80 percent (and for which we propose to have evaluation levels of 30 to 60 percent, as described above). The proposed new criteria under diagnostic code 5255 are not appropriate for aseptic necrosis of the femur because a fracture of the femur is not always present, and the findings are not necessarily similar. Aseptic necrosis may be painless early but then cause progressive pain with weight bearing or even at rest. Eventually, a hip replacement may be needed because of bone destruction. We propose to base evaluations on whether ambulatory support is needed and whether the femoral head is collapsed, and to evaluate pain, when present, separately under § 4.59, rather than assessing pain on the subjective criteria of whether it is ''mild,'' ''moderate,'' or ''severe''. We propose to evaluate aseptic necrosis at 60 percent if there is collapse of the femoral head and constant ambulatory support is required; at 40 percent if there is collapse of the femoral head and intermittent ambulatory support is required; and at 10 percent if there is evidence of aseptic necrosis without collapse of the femoral head. We do not propose to include a 100-percent evaluation as the consultants suggested because their evaluation levels included subjective complaints of pain, and we propose to add a note directing that an evaluation under diagnostic code 5265 will be combined with a separate evaluation for pain under § 4.59 when appropriate. We also propose to add a note indicating that the condition may be alternatively evaluated as limitation of motion of the hip combined with an evaluation for pain when appropriate, if that would result in a higher evaluation.

Other Knee Conditions

There are two relatively common areas of disability of the knee that are not addressed in the current schedule—fracture, subluxation, or dislocation of the patella and patellofemoral pain syndrome. The consultants recommended we add diagnostic codes for these conditions, and we propose to do so.

We propose to add diagnostic code 5266 as ''Patellar fracture and instability.'' This would include subluxation and dislocation of the patella, residuals of patellectomy (removal of the patella), and patellar fracture. The consultants suggested two levels of evaluation for subluxation and dislocation of the patella, with 20 percent assigned for patellofemoral subluxation or dislocation that is ''frequent,'' occurring more than once a month, and 10 percent for patellofemoral subluxation or dislocation that is ''infrequent,'' occurring less than once a month. They also suggested a separate diagnostic code for patellar fracture, with a 30-percent evaluation for symptomatic nonunion and a 20-percent evaluation for patellectomy. We propose instead that all of these conditions be evaluated under a single diagnostic code with three levels of evaluation. We propose to evaluate subluxation (a partial dislocation in which the patella spontaneously goes back into normal position) based on different criteria from the more severely disabling dislocation (which requires manual replacement of the patella). We propose an evaluation of 30 percent if there is symptomatic nonunion of a fracture of the patella, or if there is patellectomy, or if there is recurrent patellar dislocation occurring six or more times during the past 12-month period. We propose a 20-percent evaluation if there is patellofemoral subluxation (partial or incomplete dislocation of the patella) occurring

three or more times per month during the past 12-month period or if there is recurrent patellar dislocation occurring three to five times during the past 12-month period. We propose a 10-percent evaluation if there is patellofemoral subluxation one to two times per month during the past 12-month period or if there is recurrent patellar dislocation occurring one or two times during the past 12-month period. The VHA Orthopedic Committee felt that patellectomy warrants a higher rating than the consultants recommended because it can result in substantial functional impairment of the knee, and we propose to follow that recommendation. We also propose to add a note indicating that the evaluation criteria for diagnostic code 5266 encompass pain, since pain is ordinarily present in these conditions, so a separate evaluation for pain under § 4.59 is not warranted.

We also propose to add diagnostic code 5267 for patellofemoral pain syndrome (chondromalacia of patella, retropatellar pain syndromes, patellofemoral syndrome). This diagnostic code includes a group of disorders characterized by anterior knee pain between the patella and the femur, especially on climbing or descending stairs or on squatting. There may be deep tenderness on palpation and pressure on the patella, crepitus on motion, a grinding sensation behind the patella, and occasionally swelling. The diagnosis may be made clinically or based on X-ray or other imaging procedure or on arthroscopic findings. We propose that the condition be evaluated based on pain, which is the main disabling effect, under the criteria in § 4.59.

Ankle and Foot

Diagnostic code 5270, ankylosis of the ankle, currently provides a 40-percent evaluation if the ankylosis is in plantar flexion at more than 40 degrees or in dorsiflexion at more than 10 degrees, or with abduction, adduction, inversion, or eversion deformity; a 30-percent evaluation if it is in plantar flexion between 30 and 40 degrees or in dorsiflexion between zero and 10 degrees; and a 20-percent evaluation if it is in plantar flexion at less than 30 degrees. The consultants suggested evaluations ranging from zero to 40 percent for 10 different situations that apply to foot and ankle ankylosis and fusion. For example, they suggested a 40-percent evaluation for fusion of the ankle in poor weightbearing position and a 20-percent evaluation for fusion of the ankle in good weightbearing position; a 20-percent evaluation for fusion of the subtalar joint in poor weightbearing position and a 10-percent evaluation for fusion of the subtalar joint in good weightbearing position, *etc.* However, they did not define ''good'' and ''poor'' weightbearing positions. The VHA Orthopedic Committee indicated that good weightbearing would mean the foot is in a plantograde position, meaning it is in the proper position for walking. In our judgment, neither of these provides more objective guidance for rating than the current criteria, and we therefore propose only editorial changes.

The evaluation criteria for evaluating limitation of motion of the ankle (diagnostic code 5271) are currently divided into levels of 20 and 10 percent, based on whether the disability is ''marked'' or ''moderate.'' These terms are subjective, and we propose to substitute the more objective criteria recommended by the consultants. We propose to assign 20 percent if there is less than 5 degrees passive dorsiflexion or less than 10 degrees passive plantar flexion and 10 percent if there is less than 15 degrees passive dorsiflexion or less than 30 degrees passive plantar flexion. These more objective criteria should promote consistent evaluations.

Diagnostic code 5272 is currently titled ''Subastragalar or tarsal joint, ankylosis of.'' In order to reflect current medical terminology, we propose to change the term ''subastragalar'' to ''subtalar'' and retitle 5272 as ''Ankylosis of subtalar or tarsal joint.'' We propose no change in the criteria except to add ''no varus, no valgus'' to clarify what ''good weightbearing position'' means and to add ''not in plantograde position'' to indicate what ''poor weightbearing position'' means.

Diagnostic code 5273 is currently titled ''Os calcis or astragalus, malunion of.'' We propose to update the language and retitle 5273 as ''Malunion of calcaneus (os calcis) or talus.'' Currently, the condition is evaluated at 20 percent if there is ''marked'' deformity and at 10 percent if there is ''moderate'' deformity. These are subjective criteria that allow for different interpretations. The consultants suggested no change in the criteria. However, the VHA Orthopedic Committee offered objective criteria that we propose to adopt. They suggested that marked deformity would mean deformity of the talocalcaneal joint or spreading of the calcaneus deforming the weightbearing surface of the heel, because either deformity would interfere with walking. They also suggested a higher evaluation would be warranted for such deformities, and we propose to assign a 30-percent evaluation for this deformity. They suggested that moderate deformity would mean malunion of either the talus or calcaneus without deformity of the subtalar joint or weightbearing surface of the heel.

Diagnostic code 5274 is currently titled ''Astragalectomy.'' We propose to update the term ''astragalectomy'' to ''talectomy,'' which is the only change suggested by the consultants. We propose to further change the title to ''Total or partial talectomy without subsequent arthrodesis,'' as suggested by the VHA Orthopedic Committee. The Committee also suggested this is much more disabling than the current evaluation of 20 percent because it causes a severe disruption of the entire mechanism of the ankle, and we therefore propose to assign a 40-percent evaluation for talectomy.

There is currently a single diagnostic code, 5275, for ''Bones, of the lower extremity, shortening of'' under the heading ''Shortening of the Lower Extremity.'' Under this diagnostic code there are six levels of evaluation between 10 and 60 percent, but the criteria overlap. For example, a 10-percent evaluation is assigned for shortening of 1¼ to 2 inches and a 20-percent evaluation for shortening of 2 to 2½ inches so that a shortening of 2 inches could be evaluated at either 10 or 20 percent. The consultants suggested eliminating all but the 10-, 20-, and 40-percent levels because they felt these levels are more precisely related to impairment than the original levels, but their suggested criteria did not remove the overlap. We propose to retain the current levels since the objectivity of the criteria allows us to readily distinguish six levels closely related to incremental degrees of shortening. The VHA Orthopedic Committee suggested no change in the current criteria. We do propose to eliminate the overlapping, for example, by assigning 10 percent if there is shortening of at least 1¼ but less than 2 inches (3.2 to less than 5.1 cm.) and 20 percent if there is shortening of at least 2 but less than 2½ inches (5.1 to less than 6.4 cm.). These represent only minimal changes in the criteria for the sake of clarity. We also propose to edit the instructions in two notes for measuring leg length and the prohibition against combining shortened leg with other evaluations for fracture or faulty union in the same extremity.

Diagnostic code 5276 is currently titled ''Flatfoot, acquired.'' We propose to remove the term ''acquired'' because, as the consultants noted, it is not of assistance in distinguishing this condition, which may or may not have

preexisted service, may or may not have been congenital, and, if preexisting service, may or may not have undergone aggravation during service. Making all of those determinations is part of the rating process that decides whether the condition should be service-connected, but they are not inherent to evaluation. We also propose to add the term ''pes planus'' to the title, since this is the medical term for flatfoot. The current criteria provide an evaluation of 50 percent if bilateral and 30 percent if unilateral for the pronounced condition, with marked pronation, extreme tenderness of the plantar surfaces of the feet, marked inward displacement and severe spasm of the tendo achillis on manipulation, not improved by orthopedic shoes or appliances. It provides an evaluation of 30 percent if bilateral and 20 percent if unilateral for the severe condition, with objective evidence of marked deformity (pronation, abduction, etc.), pain on manipulation and use accentuated, indication of swelling on use, characteristic callosities. It provides an evaluation of 10 percent for either the unilateral or bilateral condition if it is moderate, with weightbearing line over or medial to great toe, inward bowing of the tendo achillis, pain on manipulation and use of the feet. It also provides an evaluation of zero percent if mild, with symptoms relieved by built-up shoe or arch support.

The consultants suggested only three levels of disability with deletion of the ''pronounced'' category, which they said was not clearly differentiated from the ''severe'' category. Raters have also been confused by the criteria for the ''severe'' and ''pronounced'' levels. The consultants suggested new, more detailed and comprehensive criteria ranging from 40 percent (for the bilateral condition) to zero percent. We propose to adopt their criteria, with one exception. Instead of the single evaluation level of 10 percent for unilateral or bilateral flatfeet of moderate deformity that they suggested, we propose to evaluate each foot separately at every level, since it is clearly more disabling to have deformed feet bilaterally than unilaterally, and assigning the same evaluation whether only one foot or both feet are involved is not equitable. We propose to assign a 20-percent evaluation for deformity with, on weightbearing, significant eversion of the heel, flattened arch, collapse of the midfoot structures with the talar head displaced both medial and plantar, forefoot abduction; pain in the arch; not significantly relieved by the use of appliances, orthoses, or orthopedic shoes. We propose a 10-percent evaluation for deformity with a perpendicular position to slight eversion of the heel, the presence of a slight arch on non-weightbearing which totally collapses on weightbearing; forefoot abduction; pain in the arch and legs; partially relieved by the use of appliances, orthoses, or orthopedic shoes. We propose a zero-percent evaluation if there is deformity but a normal arch on non-weightbearing, a perpendicular heel position; tenderness in the arch or muscles and tendons attaching to the midfoot; symptoms completely relieved by, or do not require, the use of appliances, orthoses, or orthopedic shoes. We propose to add a note directing that each foot be separately evaluated, with the evaluations to be combined. This would represent a change in procedure from the current criteria and is warranted because flatfoot may be either a unilateral or bilateral condition and is clearly more disabling if both feet are affected, even at the milder level. In addition, the feet may not be at the same level of severity, and these evaluations allow an individual assessment of each foot. We propose to add a second note, for the sake of clarity, directing raters not to combine an evaluation under this diagnostic code with an evaluation for pain under § 4.59 because pain is encompassed by these evaluation criteria.

Diagnostic code 5277 is currently titled ''Weak foot, bilateral.'' This is a vague condition. The consultants suggested a change to ''Compromised (or weak) foot, bilateral'' because this is how the condition is described in current medical practice and suggested it be rated based on the underlying condition, with a minimum evaluation of 10 percent. They noted that it may include single or multiple conditions affecting function, including muscle atrophy, loss, weakness, and stiffness; bone atrophy or loss; joint stiffness; vascular compromise; or neurological compromise. We propose instead to delete this diagnostic code, as suggested by the VHA Orthopedic Committee, because there are specific rating criteria under other diagnostic codes for disabilities such as arthritis, neuropathy, and vascular disease that may affect the foot, and the existing and recommended criteria under 5277 are not necessary for evaluation.

Diagnostic code 5278 is currently titled ''Claw foot (pes cavus), acquired,'' and we propose to update it to ''Pes cavus (clawfoot),'' removing ''acquired,'' because the consultants pointed out that it is difficult to distinguish an acquired pes cavus from a congenital one. It is currently evaluated at 50 percent if bilateral and 30 percent if unilateral if there is marked contraction of the plantar fascia with dropped forefoot, all toes hammertoes, very painful callosities, and marked varus deformity. It is evaluated at 30 percent if bilateral and 20 percent if unilateral if all toes tend to dorsiflexion, and there are limitation of dorsiflexion at ankle to right angle, shortened plantar fascia, and marked tenderness under metatarsal heads. It is evaluated at 10 percent whether bilateral or unilateral if the great toe is dorsiflexed, and there are some limitation of dorsiflexion at ankle and definite tenderness under metatarsal heads. If the condition is ''slight,'' it is evaluated at zero percent. These criteria contain several subjective terms, for example, ''marked,'' ''definite,'' and ''slight,'' that inject an element of subjectivity.

The consultants recommended three levels instead of four, with 40 percent the highest level, when bilateral, comparable to other lower extremity conditions. They also suggested that 10 percent be assigned for moderate pes cavus bilaterally, because the impairment is considerably less. We propose to revise the criteria, with each foot being separately evaluated, using the most objective of the criteria related to disability as a basis of evaluation, namely, whether appliances, orthoses, or orthopedic shoes are required and whether they relieve symptoms of pain and tenderness, and callosities, if present. These criteria represent a modification of the consultants' recommendations. We propose that a 20-percent evaluation be assigned if symptoms and callosities are not significantly relieved by appliances, orthoses, or orthopedic shoes; a 10-percent evaluation if symptoms and callosities are partially relieved by appliances, orthoses, or orthopedic shoes; and a zero-percent evaluation if symptoms are completely relieved by, or do not require, the use of appliances, orthoses, or orthopedic shoes. We propose to add two notes under this diagnostic code, the first directing that each foot be separately evaluated, with the evaluations to be combined. This would allow each foot to be separately evaluated, which will be of value when the condition differs in severity from one foot to the other. We propose to add a second note stating that in the absence of trauma or other specific cause of aggravation, pes cavus is to be considered a congenital or developmental abnormality.

Diagnostic code 5279 is currently titled ''Metatarsalgia, anterior (Morton's disease), unilateral, or bilateral''. There

is currently a single evaluation level of 10 percent. We propose to change the title to ''Metatarsalgia (including Morton's neuroma)'' for clarity. Metatarsalgia is a term that refers to chronic pain in the ball of the foot from any of a variety of causes, one of which is Morton's neuroma. Morton's neuroma (or disease) is a painful neuropathy of the digital plantar nerve that usually results in pain in the ball of the foot between the third and fourth metatarsal heads. The consultants suggested no change in the evaluation criteria but did suggest we add a note saying that treatment should be attempted before the patient is given a permanent disability rating. We propose to incorporate some of this information within the revised criteria. The rating we give, however, is not necessarily a permanent one in most cases because we frequently re-evaluate veterans with disability if they have a condition that is not stable and is subject to improvement. As with pes cavus and flatfoot, the symptoms of metatarsalgia may be unilateral or bilateral, and may be relieved with appliances, orthoses, or orthopedic shoes. Occasionally, surgery is needed for relief. We propose to use this information as a basis of evaluation and to direct that each foot be evaluated separately, with the evaluations to be combined. Assigning a separate evaluation for each foot will allow more appropriate evaluation of the total disabling effects, since bilateral metatarsalgia is clearly more disabling than unilateral metatarsalgia, and the severity of the effects may not be the same in both feet when the condition is bilateral. We propose that 10 percent be assigned if there is pain in the ball of the foot not significantly relieved by the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done, and that zero percent be assigned if there is pain in the ball of the foot largely or completely relieved by, or does not require, the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done.

Diagnostic code 5280 is currently titled ''Hallux valgus, unilateral.'' The consultants suggested we add ''with or without bunion deformity'' to the title to make the description more complete. We rely on the examiner to make the diagnosis and do not propose to add the suggested language because it would not assist in evaluation. We do propose to remove ''unilateral'' from the title and add, as for the other foot conditions, a note indicating that each foot is to be separately evaluated, and the evaluations combined. There are currently two criteria for a 10-percent evaluation, the only level defined. They are ''operated, with resection of metatarsal head'' and ''severe, if equivalent to amputation of great toe.'' The consultants suggested we delete the reference to resection of the metatarsal head since that is no longer done, and we propose to do so. They also suggested we add ''symptomatic'' to the other criterion, since not all individuals have symptoms. The major findings in hallux valgus (bunion) are pain or discomfort in the first metatarsophalangeal joint (the joint at the base of the great toe) or under the ball of the foot, deformity at that joint, and sometimes redness and swelling. The VHA Orthopedic Committee felt evaluation based on amputation was inappropriate and suggested that criteria be based on symptoms and their response to treatment. Taking both of these suggestions into account, we propose to provide a 10-percent evaluation if there are symptoms that are not significantly relieved by the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done, and a zero-percent evaluation if symptoms are largely or completely relieved by, or not requiring, the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done. These criteria are more appropriate to the condition than assessing whether it is equivalent to an amputation, which is likely to result in interference with walking and a gait abnormality rather than pain as a primary symptom, as in the case of hallux valgus. We propose to add a second note, for the sake of clarity, directing raters not to combine an evaluation under diagnostic code 5280 with an evaluation for pain under § 4.59, because pain is encompassed by these evaluation criteria.

Diagnostic code 5281 is currently titled ''Hallux rigidus, unilateral, severe.'' The consultants suggested we include the term ''hallux limitus,'' another name for the condition, in the title, and we propose to do so. Hallux rigidus is a painful degenerative arthritis with limited or no motion at the first metatarsal-phalangeal joint. We propose to add a note directing that each foot be evaluated separately, as other foot conditions are, rather than using ''unilateral'' in the title. It is currently evaluated as severe hallux valgus, with a 10% evaluation. At the suggestion of the VHA Orthopedic Committee, we propose to remove the current note stating that this condition is not to be combined with claw foot ratings because the condition has nothing to do with clawfoot. The consultants suggested no change from the current evaluation. However, the VHA Orthopedic Committee felt that hallux rigidus with ankylosis of the first metatarsal-phalangeal joint warrants a 20-percent evaluation because it results in pain on any activity, such as walking or running, and may affect the gait. We therefore propose to revise the criteria to provide three levels of evaluation based on the extent of limitation of motion and extent of pain. We propose a 20-percent evaluation if there is pain with any motion of the joint, including walking, with ankylosis (no motion) of the first metatarsal-phalangeal joint and gait abnormality; a 10-percent evaluation if there is pain on walking, with limitation of motion of the first metatarsal-phalangeal joint; and a zero-percent evaluation if there is pain only on extremes of motion, with limitation of motion of the first metatarsal-phalangeal joint. These criteria are more specific to hallux rigidus than the criteria for hallux valgus and should support more consistent evaluations. We propose to delete the note that now reads ''not to be combined with claw foot ratings'' as unnecessary, since these conditions are unrelated and unlikely to occur together.

Diagnostic code 5282 is currently titled ''Hammer toe.'' We propose to add ''contracted or deviated toes'' to the heading of hammertoe, as suggested by the consultants, in order to describe this category of disability more accurately. The condition is currently evaluated at 10 percent if all toes of one foot are affected, without clawfoot, and at zero percent if a single toe is affected. The consultants simply suggested that ''clawfoot'' be replaced with ''pes cavus.'' We propose criteria that are based on signs and symptoms rather than solely on the presence of the condition, since not everyone with this condition is equally disabled. Some develop painful calluses on top of the toe or on the ball of the feet, some have occasional muscle cramping and weakness, and some require surgery because of these problems. We therefore propose criteria similar to those for other foot problems discussed above, based on symptoms and response to treatment.

We propose to assign a 10-percent evaluation if there is hammertoe with pain and calluses not relieved by the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done; and a zero-percent evaluation if there is hammertoe with pain and calluses largely or completely relieved by, or not requiring the use of, appliances, orthoses, or orthopedic shoes, or by surgery, if that was done. These criteria better correlate with

disability from hammertoe. We propose to add a note directing that each foot, but not each toe, be evaluated separately, with the evaluations to be combined, and we propose to add a second note directing that an evaluation not be assigned both under diagnostic code 5282 and diagnostic code 5278 (pes cavus (clawfoot)) because the findings may be similar and overlapping.

Diagnostic code 5283, malunion or nonunion of the metatarsal or tarsal bones, currently provides levels of 30, 20, and 10 percent, and each percentage level is determined by whether the disability is ''severe,'' ''moderately severe,'' or ''moderate.'' No criteria are provided to explain what these words are intended to mean. The consultants suggested criteria for the three levels of ''extreme, not amenable to surgical correction,'' ''severe,'' and ''moderate.'' These criteria, however, would not adequately remove the subjectivity of the current criteria. The VHA Orthopedic Committee suggested we develop criteria based on symptoms interfering with activities of daily living, athletic activity, and response to treatment, and we propose to follow their suggestion. We propose that a 30-percent evaluation be assigned if there are signs and symptoms (such as pain, calluses, abnormal or limited motion of affected bones or joints) that interfere with activities of daily living and that are not significantly relieved by appliances, orthoses, or orthopedic shoes, or by surgery, if that was done; a 20-percent evaluation if there are signs and symptoms that are partly relieved by appliances, orthoses, or orthopedic shoes, or by surgery, if that was done, but that interfere at times with activities of daily living and with most athletic activity; and a ten-percent evaluation if there are signs and symptoms that are largely or completely relieved by appliances, orthoses, or orthopedic shoes, or by surgery, if that was done, and that do not interfere with activities of daily living but that may at times prevent activities such as running and jumping. These are more objective than the current criteria and provide guidelines that should promote consistent evaluations. They provide levels of 30, 10, and zero rather than 30, 20, and 10 because these levels are more fitting to these criteria and are consistent with the evaluations for malunion of the talus and calcaneus. We propose to add to the title ''except talus and calcaneus'' because these tarsal bones are evaluated under diagnostic code 5273. There is currently a note under diagnostic code 5283 directing that if there is actual loss of use of the foot, the evaluation should be 40 percent. We propose to delete this note, as these criteria are adequate for evaluating this condition. Disability that approaches loss of use of a foot is likely to have neurologic or vascular compromise and would be more appropriately evaluated under another diagnostic code.

We propose to change the title of diagnostic code 5284, currently ''Foot injuries, other.'' The category of disability this code is intended to cover is so vague, and its evaluation criteria so subjective, consisting of 30 percent for ''severe,'' 20 percent for ''moderately severe,'' and 10 percent for ''moderate,'' that it is unclear what conditions would be evaluated under this code and on what basis. There are several other diagnostic codes with clear criteria under which foot injuries can be appropriately rated, but we propose to title this diagnostic code ''Neurotrophic disorders of the foot'' because these are common conditions that do not fall under any other specific diagnostic code, either in the orthopedic or neurologic sections of the rating schedule. This category would include Charcot's foot, diabetic neurotrophic feet, etc. The VHA Orthopedic Committee recommended its addition. We propose four levels of evaluation, with 30 percent assigned for chronic ulceration that cannot be controlled by the use of orthoses; 20 percent for recurrent ulcers that can be controlled by the use of orthoses; 10 percent for pain that is not relieved by orthoses or shoe modification; and zero percent for pain that is relieved by orthoses or shoe modification. We also propose to add a note directing that if there is osteomyelitis of the foot (which may be associated with chronic ulcers that are infected), it will be rated under diagnostic code 5000 (osteomyelitis). We propose to add a second note directing that a 20- or 30-percent evaluation under diagnostic code 5284 may be combined with an evaluation for pain under § 4.59.

Skull

Under the subheading of ''The Skull,'' diagnostic code 5296 encompasses loss of part of the inner and outer tables of the skull. The current criteria are 80 percent if there is a brain hernia; and if there is not a brain hernia, 50 percent if there is an area larger than a 50-cent piece or 1.140 square inches (7.355 square centimeters); 30 percent if the area is intermediate; and 10 percent if the area is smaller than the size of a 25-cent piece or 0.716 square inches (4.619 square centimeters). We propose to delete the references to coins and round off the measurements, which are carried out to more decimal places than are reasonably measurable or are necessary. If a skull defect has been repaired by a cranioplasty (covering of the defect by bone, metal, or other material), it is not considered disabling. For this reason, we propose to add to the title the phrase ''without cranioplasty (covering of defect by bone, metal, or other material).'' A current note directs that intracranial complications, such as seizures or paralysis, be rated separately. We propose to add a second note stating that skull loss covered by bone or a prosthesis will not be used in calculating the area of skull loss, because these lessen the danger of injury to the brain.

Ribs

We propose only minor changes, largely editorial, in diagnostic code 5297, ''Ribs, removal of'' under the subheading ''The Ribs.'' A current note states that the rating for rib resection or removal is not to be applied with ratings for purulent pleurisy, lobectomy, pneumonectomy or injuries of pleural cavity. Purulent pleurisy no longer has a diagnostic code in the rating schedule, and we propose to change the note to read: ''Do not combine an evaluation under diagnostic code 5297 with an evaluation under diagnostic code 6844 (post-surgical residual (lobectomy, pneumonectomy, etc.)) or 6845 (chronic pleural effusion or fibrosis)''.

Coccyx

We propose to change the current heading of diagnostic code 5298 from ''Coccyx, removal of,'' to ''Partial or complete removal of the coccyx,'' and to retain a 10-percent evaluation if there are painful residuals. We propose to remove the zero-percent criterion ''without painful residuals'' as unnecessary (*see* § 4.31 of this part).

Section 4.14

We also propose, for the sake of clarity, to revise 38 CFR 4.14, ''Avoidance of pyramiding,'' in subpart A of part 4 (General Policy in Rating) because evaluating orthopedic disabilities commonly requires application of this section, and the principles in this section have sometimes been misunderstood. Section 4.14 currently states that the evaluation of the same disability under various diagnoses is to be avoided and that both the use of manifestations not resulting from service-connected disease or injury in establishing the service-connected evaluation, and the evaluation of the same manifestation under different

diagnoses are to be avoided. This has sometimes been unclear to raters. We propose to retitle this section ''Avoiding overlapping of evaluations,'' which more clearly reflects its intent. We propose that there be four paragraphs, with the first (a) directing raters not to use the same sign(s) or symptom(s) to support more than one evaluation (under different diagnostic codes) for a single disability. We propose that paragraph (b) direct raters not to use the same sign(s) or symptom(s) to support an evaluation for more than one disability. Paragraphs (c) and (d) would be the converse of (a) and (b), with (c) directing raters not to evaluate the same disability at the same time (under different diagnostic codes) using the same sign(s) or symptom(s) as the basis of evaluation, and (d) directing raters not to evaluate more than one disability using the same sign(s) or symptom(s) as the basis of evaluation. This section means, for example, that low back pain present in someone who has both lumbar intervertebral disc syndrome (diagnostic code 5293) and limitation of motion of the lumbar spine due to degenerative arthritis (diagnostic code 5292) cannot be used to support separate evaluations for these two back conditions, and cold injury residuals such as numbness of the toes cannot be used to support both an evaluation for cold injury under diagnostic code 7122 (cold injury residuals) and another evaluation for peripheral neuropathy with numbness due to cold injury under diagnostic code 8521 (paralysis of external popliteal nerve). In our judgment, the revised language is more straightforward and clearer and will resolve the difficulty raters have had in interpreting the current language.

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed regulatory amendment would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this proposed regulatory amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed regulatory amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

38 CFR Part 4

Disability benefits, Pensions, Veterans.

Approved: October 24, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, we propose to amend 38 CFR parts 3 and 4 as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.350 paragraph(a)(2)(i)(*c*) is added to read as follows:

§ 3.350 Special monthly compensation ratings.

* * * * *

(a) * * *

(2) * * *

(i) * * *

(*c*) Amputation of the thumb and any three fingers of a single hand will constitute loss of use of the hand.

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PART 4—SCHEDULE FOR RATING DISABILITIES

3. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

Subpart A—General Policy in Rating

4. Section 4.14 is revised to read as follows:

§ 4.14 Avoiding overlapping of evaluations.

(a) Do not use the same sign(s) or symptom(s) to support more than one evaluation (under different diagnostic codes) for a single disability.

(b) Do not use the same sign(s) or symptom(s) to support an evaluation for more than one disability.

(c) Do not evaluate the same disability at the same time (under different diagnostic codes) using the same sign(s) or symptom(s) as the basis of evaluation.

(d) Do not evaluate more than one disability using the same sign(s) or symptom(s) as the basis of evaluation.

(Authority: 38 U.S.C. 1155)

Subpart B—Disability Ratings

5. Section 4.40 is revised to read as follows:

§ 4.40 Evaluation of musculoskeletal disabilities.

The evaluation criteria provided for each condition, or to which the rater is referred for evaluating a given condition, are generally to be the sole basis of evaluation. In conditions where pain is a complaint, but pain is not addressed in the evaluation criteria under the diagnostic code for the condition, however, apply the provisions of § 4.59, combining an evaluation for pain with an evaluation under the diagnostic code for the condition. Factors such as fatigability or impaired coordination, speed, or endurance are encompassed by the evaluation criteria under each diagnostic code. An additional evaluation based on one of these factors will not be assigned.

(Authority: 38 U.S.C. 1155)

§ 4.41 [Removed and Reserved]

6. Section 4.41 is removed and reserved.

7. Section 4.42 is revised to read as follows:

§ 4.42 Examination of joints

For VA rating purposes, the range of motion of a joint must be determined by measurement with a goniometer. The normal ranges of motion for major joints

and the spine are provided on Plates I, II, and V in § 4.71a.

(Authority: 38 U.S.C. 1155)

§§ 4.43 and 4.44 [Removed and Reserved]

8. Sections 4.43 and 4.44 are removed and reserved.

9. Sections 4.45 and 4.46 are revised to read as follows:

§ 4.45 Major and Minor Joints for Arthritis Evaluations.

For the purpose of rating disability from arthritis, the various joints are classified as follows:

(a) *Major Joints:* Each shoulder, elbow, wrist, hip, knee and ankle joint is a major joint. All other joints are minor joints.

(b) *Groups of Minor Joints to be Rated as Major Joints:* A group of minor joints with arthritis will be rated as a major joint. Any of the following constitutes a group of minor joints:

(1) Any combination of three or more interphalangeal or metacarpophalangeal joints of a single hand.

(2) Any combination of three or more interphalangeal, metatarso-phalangeal, tarso-metatarsal, or tarso-tarsal (or intertarsal) joints of a single foot.

(3) Any combination of two or more cervical vertebral joints.

(4) Any combination of two or more thoracolumbar vertebral joints.

(5) A combination of the lumbosacral joint and both sacroiliac joints.

(Authority: 38 U.S.C. 1155)

§ 4.46 Evaluation of muscle strength.

(a) Evaluate muscle strength or weakness for rating purposes based on the following muscle grading system:

Muscle grading	Description
Absent (0)	No palpable or visible muscle contraction.
Trace (1)	Palpable or visible muscle contraction, but muscle produces no movement, even with gravity eliminated.
Poor strength (2)	Muscle produces movement only when gravity is eliminated.
Fair strength (3)	Muscle produces movement against gravity but not against any added resistance.
Good strength (4)	Muscle produces movement against some, but no more than moderate, resistance.
Normal strength (5)	Muscle produces movement against full or ''normal'' resistance.

(b) Evaluate loss of muscle function as follows:

(1) Complete: No motor function (muscle grading system 1 or zero).

(2) Incomplete, severe: Marked weakness associated with muscle atrophy (muscle grading system 2).

(3) Incomplete, moderate: Weakness (muscle grading system 3).

(4) Incomplete, mild: Weakness (muscle grading system 4).

(Authority: 38 U.S.C. 1155)

§§ 4.57 and 4.58 [Removed and Reserved]

10. Sections 4.57 and 4.58 are removed and reserved.

11. Section 4.59 is revised to read as follows:

§ 4.59 Evaluation of pain in musculoskeletal conditions.

When the evaluation criteria for a condition in § 4.71a are based on signs and symptoms *other than* pain, and pain is a complaint, combine (do not add) the evaluation based on criteria other than pain with an evaluation for pain based on the following scale, and assign a single (combined) evaluation for the condition under the appropriate diagnostic code:

(a) Complaint of pain that globally interferes with and severely limits daily activities; meets the requirement for a 30-percent evaluation under this section; and a psychiatric evaluation has excluded other processes to account for the pain	100
(b) Complaint of pain at rest, with pain on minimal palpation or on attempted range of motion on physical examination; X-ray or other imaging abnormalities; and abnormal findings on a vascular or neurologic special study	30
(c) Complaint of pain on any use, with pain on palpation and through at least one-half of the range of motion on physical examination; and X-ray or other imaging abnormalities	20
(d) Complaint of pain on performing some daily activities, with pain on motion (through any part of the range of motion) on physical examination; and X-ray or other imaging abnormalities	10
(e) Complaint of mild or transient pain on performing some daily activities, with correlative finding(s) on physical examination (for example, pain on palpation or pain on stressing the joint), but without X-ray or other imaging abnormalities	0

Note (1): Do not combine a 100-percent evaluation assigned under this section with any other evaluation for the same condition.

Note (2): The provisions of § 4.68, ''Limitation of combined evaluation of musculoskeletal and neurologic disabilities of an extremity,'' will apply to the evaluation of conditions evaluated wholly or partly under § 4.59, except that a 100-percent evaluation may be assigned under § 4.59 when appropriate, regardless of the percentage evaluation allowed under a particular diagnostic code.

(Authority: 38 U.S.C. 1155)

§§ 4.61 through 4.64 and 4.66 [Removed and Reserved]

12. Sections 4.61 through 4.64, and 4.66, are removed and reserved.

13. Sections 4.67 through 4.69 are revised to read as follows:

§ 4.67 Pelvic bone fractures.

Evaluate fractures of the pelvic bones based on the specific residuals, such as limitation of motion of the spine or hip, muscle injury, or sciatic or other peripheral nerve neuropathy.

(Authority: 38 U.S.C. 1155)

§ 4.68 Limitation of combined evaluation of musculoskeletal and neurologic disabilities of an extremity.

Unless the evaluation criteria for a particular condition allow for a higher evaluation, the combined evaluation for musculoskeletal and neurologic disabilities of an extremity will not exceed the rating that would be assigned for an amputation of the extremity at the level that would remove the affected areas. When a painful stump neuroma develops following amputation, the amputation will be evaluated as though it had been performed one level higher (as described under the diagnostic codes for evaluation of amputations of the extremities) than the actual amputation site.

(Authority: 38 U.S.C. 1155)

§ 4.69 Dominant hand.

Handedness, for the purpose of assigning a dominant or nondominant rating, will be determined by the evidence of record or by testing on examination. Only one hand will be considered dominant; the other will be considered nondominant. In the case of an ambidextrous individual, the injured hand, or the more severely injured hand, will be considered the dominant hand, for rating purposes.

(Authority: 38 U.S.C. 1155)

§ 4.70 [Removed and Reserved]

14. Section 4.70 is removed and reserved.

15. Section 4.71 is revised to read as follows:

§ 4.71 Baseline for joint motion measurement

Plates I and II show the normal range of motion of joints of the upper and lower extremities. The baseline for joint range of motion measurement, or zero degrees, is the normal anatomical position (arms at side, palms forward, legs extended), with two exceptions:

(a) The zero degrees position for shoulder rotation is the arm abducted to 90 degrees, the elbow flexed to 90 degrees, and the forearm pronated to 90 degrees. The forearm is then midway between internal and external rotation of the shoulder (Plate I).

(b) The zero degrees position for forearm supination and pronation is the arm next to the body in normal anatomical position and the elbow flexed to 90 degrees. The forearm is then midway between supination and pronation (Plate I).

(Authority: 38 U.S.C. 1155)

16. Section 4.71a is amended by:

a. Removing Diagnostic Codes 5005 through 5008, 5105, 5108 through 5111, 5259, 5263, and 5277.

b. Revising Diagnostic Codes 5000 through 5004, 5009 through 5024, 5051 through 5056, 5104, 5106, 5107, 5120 through 5156, 5160 through 5167, 5170 through 5173, 5200 through 5203, 5205 through 5215, 5250 through 5258, 5260 through 5262, 5270 through 5276, 5278 through 5284, and 5296 through 5298.

c. Adding Diagnostic Codes 5204, 5231 through 5233, and 5265 through 5267.

The revisions and additions read as follows:

§ 4.71a Schedule of ratings—musculoskeletal system.

ACUTE, SUBACUTE, OR CHRONIC DISEASES

	Rating
Note: When evaluating any disability of the musculoskeletal system, refer to § 3.350 of this chapter to determine whether the veteran may be entitled to special monthly compensation due either to anatomical loss or loss of use of a limb or to combinations of losses with other specified disabilities.	
5000 Osteomyelitis, acute, subacute, or chronic:	
Chronic intractable osteomyelitis of any site associated with debilitating complications such as anemia and amyloidosis	100
Osteomyelitis of the spine, pelvis, shoulder, elbow, wrist, hip, knee or ankle, or of two or more non-contiguous bones:	
When active or acute, with constitutional signs and symptoms, such as fever, fatigue, malaise, debility, and septicemia	100
When inactive or chronic, with two or more recurrent episodes of active infection (following the initial infection) within the past 5 years	60
When inactive or chronic, with one recurrent episode of active infection (following the initial infection) within the past 5 years	30
When inactive or chronic, without a recurrent episode of active infection within the past 5 years	0
Osteomyelitis not involving the spine, pelvis, shoulder, elbow, wrist, hip, knee or ankle, not involving two or more non-contiguous bones, and not involving only a single finger or toe:	
When active or acute	40
When inactive or chronic, with two or more recurrent episodes of active infection (following the initial infection) within the past 5 years	30
When inactive or chronic, with one recurrent episode of active infection (following the initial infection) within the past 5 years	20
When inactive or chronic, without a recurrent episode of active infection within the past 5 years	0
Osteomyelitis of a single finger or toe (these evaluations apply even if they exceed the evaluation for amputation of a finger or toe, *i.e.*, they are exceptions to § 4.68):	
When active or acute	10
When inactive or chronic, with two or more recurrent episodes of active infection (following the initial infection) within the past 5 years	10
When inactive or chronic, with one or no recurrent episodes of active infection (following the initial infection) within the past 5 years	0
Note (1): Subject to the limitations of § 4.68, combine an evaluation for inactive or chronic osteomyelitis under diagnostic code 5000 with an evaluation for chronic residuals, such as limitation of motion, ankylosis, etc., under the appropriate diagnostic code and for pain (under § 4.59) when appropriate.	
Note (2): After removal or resection of the infected bone, evaluate under the diagnostic code most appropriate for evaluating the residuals, such as amputation, shortening, limitation of motion, etc., but not under the criteria for diagnostic code 5000.	
5001 Bones and joints, tuberculosis of, active or inactive:	
Active	100
Inactive: Rate under § 4.88c or 4.89, whichever is appropriate.	
5002 Rheumatoid arthritis:	
Constant or near-constant debilitating signs and symptoms due to a combination of inflammatory synovitis (pain, swelling, tenderness, warmth, and morning stiffness in and around joints), destruction of multiple joints, and extra-articular (other than joint) manifestations	100
Incapacitating exacerbations or flares with a total duration of at least 6 weeks during the past 12-month period, due either to inflammatory synovitis and destruction of multiple joints or to a combination of joint problems and extra-articular manifestations	60
Incapacitating exacerbations or flares with a total duration of at least 4 weeks but less than 6 weeks during the past 12-month period due to inflammatory synovitis, weakness, and fatigue	40
Incapacitating exacerbations or flares with a total duration of at least 2 weeks but less than 4 weeks during the past 12-month period due to inflammatory synovitis, weakness, and fatigue	20
Incapacitating exacerbations or flares with a total duration of at least 1 week but less than 2 weeks during the past 12-month period due to inflammatory synovitis, weakness, and fatigue	10
Note (1): Evaluate rheumatoid arthritis based either on the evaluation criteria under diagnostic code 5002 or on the combined evaluation of chronic residuals of affected joints, whichever method results in a higher evaluation.	

ACUTE, SUBACUTE, OR CHRONIC DISEASES—Continued

	Rating
Note (2): When evaluating based on chronic joint residuals, evaluate each affected major joint or group of minor joints on findings such as limitation of motion, ankylosis, joint instability, *etc.*, under the appropriate diagnostic code, and combine each with an evaluation for pain under § 4.59 when appropriate.	
Note (3): Separately evaluate extra-articular manifestations of rheumatoid arthritis, such as pulmonary fibrosis; pleural inflammation; weakness or atrophy of muscles; emaciation; anemia; vasculitis (of skin or systemic); neuropathy, such as peripheral nerve neuropathy, entrapment neuropathy, and cervical myelopathy; pericarditis; Sjogren's syndrome (dry eyes and mouth); and eye complications (such as scleritis and episcleritis), under the appropriate diagnostic code(s), unless used to support an evaluation under diagnostic code 5002.	
Note (4): An incapacitating exacerbation or flare means one requiring bedrest or wheelchair use and treatment by a health care provider.	
5003 Osteoarthritis (degenerative or hypertrophic arthritis):	
Separately evaluate each major joint or group of minor joints affected with osteoarthritis based on limitation of motion, ankylosis, joint instability, *etc.*, under the appropriate diagnostic code, and combine that evaluation with an evaluation for pain under § 4.59 when appropriate, subject to the limitations of § 4.68.	
Note (1): The diagnosis of osteoarthritis of any joint must be confirmed (one time only) by X-ray or other imaging procedure.	
Note (2): *Generalized osteoarthritis.* If osteoarthritis is diagnosed on the basis of positive X-ray or other imaging procedure and positive physical findings in three or more joints (major joints, groups of minor joints, or both) during service or within 1 year following the date of separation from service, the condition will be considered to be generalized osteoarthritis and recognized as a systemic condition. Once generalized osteoarthritis has been established based on these criteria, consider all joints subsequently diagnosed with osteoarthritis to be part of the same condition.	
Note (3): *Localized osteoarthritis.* Osteoarthritis diagnosed on the basis of positive X-ray or other imaging procedure and positive physical findings in fewer than three joints (major joints, groups of minor joints, or both) during service or within 1 year following the date of separation from service will be considered to be localized osteoarthritis rather than a systemic condition. With localized osteoarthritis, do not consider any joints subsequently diagnosed with osteoarthritis to be part of the same condition.	
5004 Infectious arthritis (gonorrheal, pneumococcic, typhoid, syphilitic, streptococcic, etc.):	
During and for 3 months following cessation of therapy for active infectious arthritis of the spine, the pelvis, or a major joint	100
During and for three months following cessation of therapy for active infectious arthritis not involving the spine, the pelvis, or a major joint and not limited to a single finger or toe	40
During and for three months following cessation of therapy for active infectious arthritis of a single finger or toe	10
Note: Following the three-month period after cessation of therapy, separately evaluate chronic residuals, if any, of each joint affected with infectious arthritis, based on limitation of motion, ankylosis, joint instability, post-surgical residuals (such as arthroplasty), *etc.,* under the appropriate diagnostic code, and combine the evaluation for chronic residuals of each joint with an evaluation for pain under § 4.59 when appropriate, subject to the limitations of § 4.68.	
5009 Other types of noninfectious inflammatory arthritis (including ankylosing spondylitis, Reiter's syndrome, psoriatic arthritis, arthritis associated with inflammatory bowel disease, and other seronegative types of arthritis):	
Constant or near-constant debilitating signs and symptoms, due to a combination of inflammatory synovitis (pain, swelling, tenderness, warmth, and morning stiffness in and around joints), destruction of multiple joints, and extra-articular (other than joint) manifestations	100
Incapacitating exacerbations or flares with a total duration of at least 6 weeks during the past 12-month period, due either to inflammatory synovitis and destruction of multiple joints or to a combination of joint problems and extra-articular manifestations	60
Incapacitating exacerbations or flares with a total duration of at least 4 weeks but less than 6 weeks during the past 12-month period due to inflammatory synovitis, weakness, and fatigue	40
Incapacitating exacerbations or flares with a total duration of at least 2 weeks but less than 4 weeks during the past 12-month period due to inflammatory synovitis, weakness, and fatigue	20
Incapacitating exacerbations or flares with a total duration of at least 1 week but less than 2 weeks during the past 12-month period due to inflammatory synovitis, weakness, and fatigue	10
Note (1): Evaluate based either on the evaluation criteria under diagnostic code 5009 or on the combined evaluation of chronic residuals of affected joints, whichever method results in a higher evaluation.	
Note (2): When evaluating based on chronic joint residuals, evaluate each major joint or group of minor joints with arthritis based on limitation of motion, ankylosis, joint instability, *etc.,* under the appropriate diagnostic code, and combine each with an evaluation for pain under § 4.59 when appropriate.	
Note (3): Separately evaluate the extra-articular manifestations of the arthritis under the appropriate diagnostic code(s), unless they have been used to support an evaluation under diagnostic code 5009. Extra-articular manifestations include such findings as fever, eye problems (such as conjunctivitis, iritis, uveitis), genitourinary or gynecologic problems (such as urethritis, cystitis, prostatitis, cervicitis, salpingitis, vulvovaginitis), and heart problems (such as pericarditis, aortic valvular disease, heart block).	
Note (4): An incapacitating exacerbation or flare means one requiring bedrest or wheelchair use and treatment by a health care provider.	
5010 Traumatic arthritis (secondary osteoarthritis):	
Separately evaluate each major joint or group of minor joints with traumatic arthritis based on limitation of motion, joint instability, ankylosis, *etc.,* under the appropriate diagnostic code, and combine that evaluation with an evaluation for pain under § 4.59 when appropriate subject to the limitations of § 4.68.	
Note: The diagnosis of traumatic arthritis of any joint must be confirmed (one time only) by X-ray or other imaging procedure.	
5011 Caisson disease (residuals of decompression sickness or the bends):	
Evaluate using the criteria under an appropriate diagnostic code based on the actual residuals, such as aseptic necrosis or delayed osteoarthritis of the shoulder or hip, or neurologic manifestations (such as weakness or paraplegia of lower extremities, vestibular dysfunction with vertigo, or paresthesias of the extremities).	
5012 Malignant neoplasm of bone	100

ACUTE, SUBACUTE, OR CHRONIC DISEASES—Continued

	Rating
Note: A rating of 100% shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability evaluation shall be determined on the basis of a VA examination, or on available medical records if sufficient for evaluation. Any reduction in the evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.	
5013 Osteoporosis:	
Evaluate under the appropriate diagnostic code based on the residuals of fractures (such as shortening, deformity, limitation of motion, osteoarthritis) and combine the evaluation based on residuals of fracture with an evaluation for pain (under § 4.59) when appropriate. Separately evaluate any secondary complications, such as neurologic manifestations, pulmonary restriction due to thoracic deformity from vertebral fractures, *etc.*	
5014 Osteomalacia:	
Evaluate under the appropriate diagnostic code, based on aseptic necrosis, residuals of fracture (such as shortening, deformity, limitation of motion, osteoarthritis), and combine with an evaluation for bone pain (under § 4.59) when appropriate. Evaluate constitutional manifestations of osteomalacia, such as malaise and easy fatigability, as part of the underlying metabolic condition, such as renal disease or gastrointestinal disease, that has caused the osteomalacia.	
5015 Benign neoplasm of bones:	
Evaluate under the appropriate diagnostic code based on osteoarthritis (diagnostic code 5003), residuals of fracture (such as shortening, limitation of motion), *etc.,* and combine with an evaluation for bone pain (under § 4.59) when appropriate.	
5016 Paget's disease:	
Evaluate based on osteoarthritis (5003) or on residuals of fracture (such as shortening, limitation of motion, *etc.*) of any affected bones, and combine with an evaluation for bone pain (under § 4.59) when appropriate. Separately evaluate complications such as loss of hearing or visual impairment.	
5017 Gout or pseudogout:	
Incapacitating exacerbations or flares with a total duration of at least 6 weeks during the past 12-month period requiring treatment by a health care provider, due to inflammatory synovitis with such findings as weakness and fatigue, acute pain, swelling, heat, tenderness, or limitation of motion of multiple joints	60
Incapacitating exacerbations or flares with a total duration of at least 4 weeks but less than 6 weeks during the past 12-month period requiring treatment by a health care provider, due to inflammatory synovitis with such findings as weakness and fatigue, acute pain, swelling, heat, tenderness, or limitation motion of multiple joints	40
Incapacitating exacerbations or flares with a total duration of at least 2 weeks but less than 4 weeks during the past 12-month period requiring treatment by a health care provider, due to inflammatory synovitis with such findings as weakness and fatigue, acute pain, swelling, heat, tenderness, or limitation motion of multiple joints	20
Incapacitating exacerbations or flares with a total duration of at least 1 week but less than 2 weeks during the 12-month period requiring treatment by a health care provider, due to inflammatory synovitis with such findings as weakness and fatigue, acute pain, swelling, heat, tenderness, or limitation of motion of a single joint or multiple joints	10
Note (1): Evaluate either on the basis of the total duration of incapacitating exacerbations or flares under the criteria for diagnostic code 5017 or on the combined evaluation of chronic residuals of gout or pseudogout, whichever results in the higher evaluation.	
Note (2): If not evaluating under the criteria under diagnostic code 5017, separately evaluate chronic residuals of each major joint or group of minor joints with gout or pseudogout based on limitation of motion, ankylosis, joint instability, etc., under the diagnostic code for that finding. Combine the evaluation for chronic residuals of each major joint or group of minor joints with an evaluation for pain under § 4.59 when appropriate.	
Note (3): Separately evaluate manifestations of gout other than joint disease, such as urinary tract calculi or gouty nephropathy.	
Note (4): An incapacitating exacerbation or flare means one requiring bedrest or wheelchair use and treatment by a health care provider.	
5018 Joint effusion (Hydrarthrosis):	
A joint effusion that is present constantly, or nearly so, or if intermittent, that occurred at least two times during the past 12-month period, may be evaluated under this diagnostic code.	
Evaluate based on limitation of motion, and combine with an evaluation for pain under § 4.59 when appropriate.	
5019 Bursitis:	
Evaluate based on limitation of motion, and combine with an evaluation for pain under § 4.59 when appropriate.	
5020 Synovitis:	
Evaluate based on limitation of motion, and combine with an evaluation for pain under § 4.59 when appropriate.	
5021 Myositis:	
Evaluate based on limitation of motion, and combine with an evaluation for pain under § 4.59 when appropriate.	
5022 Periostitis:	
Evaluate based on limitation of motion, and combine with an evaluation for pain under § 4.59 when appropriate.	
5023 Myositis ossificans:	
Evaluate based on limitation of motion, and combine with an evaluation for pain under § 4.59 when appropriate	
5024 Tenosynovitis:	
Evaluate based on limitation of motion, and combine with an evaluation for pain under § 4.59 when appropriate.	

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PROSTHETIC IMPLANTS

	Rating	
	Dominant	Nondominant
Note: The 100-percent evaluation for implantation of Prosthesis (diagnostic codes 5051 through 5056) will be assigned as of the date of hospital admission. Six months following the date of hospital discharge, the appropriate disability evaluation shall be determined on the basis of a VA examination, or on available medical records if sufficient for evaluation. Any reduction in evaluation based upon that or any subsequent examination is subject to the provisions of § 3.105(e) of this chapter. The same method of evaluation will be applied when an arthroplasty is revised or redone.		
5051 Total or partial shoulder arthroplasty or replacement (with prosthesis):		
From date of hospital admission for arthroplasty, either initial or revision	100	100
With inability to abduct (move the arm away from the body) more than 45 degrees	60	50
Minimum evaluation following arthroplasty	30	20
Note (1): If there is ankylosis of the glenohumeral joint, evaluate under diagnostic code 5200 (ankylosis of glenohumeral articulation (shoulder joint)).		
Note (2): Separately evaluate complications, such as peripheral neuropathy, causalgia, and reflex sympathetic dystrophy, under an appropriate diagnostic code. An evaluation for a complication may be combined with an evaluation under diagnostic code 5051 that is less than total, as long as limitation of abduction is not used to support an evaluation for a complication.		
Note (3): Combine an evaluation under diagnostic code 5051 with an evaluation for pain under § 4.59 when appropriate.		
5052 Total or partial elbow arthroplasty or replacement (with prosthesis):		
From date of hospital admission for arthroplasty, either initial or revision	100	100
Evaluate residuals based on ankylosis of elbow (under diagnostic code 5205), limitation of flexion of elbow (under diagnostic code 5206), limitation of extension of elbow (under diagnostic code 5207), or for limitation of flexion and extension of elbow (under diagnostic code 5208), whichever results in the highest evaluation, combining this evaluation with an evaluation for pain under § 4.59 when appropriate.		
Minimum evaluation following arthroplasty	30	20
5053 Total or partial wrist arthroplasty or replacement (with prosthesis):		
From date of hospital admission for arthroplasty, either initial or revision	100	100
Evaluate residuals based on ankylosis (under diagnostic code 5214) or limitation of motion (under diagnostic code 5215), whichever results in a higher evaluation, combining this evaluation with an evaluation for pain under § 4.59 when appropriate.		
Minimum evaluation following arthroplasty	20	20
5054 Total or partial hip arthroplasty or replacement (with prosthesis):		
From date of hospital admission for arthroplasty, either initial or revision	.....	100
Requiring use of two crutches or a walker for ambulation	.....	[1] 90
Requiring use of one crutch or two canes for most ambulation, due to pain, instability, or weakness (muscle strength grade zero to 2 out of 5)	.....	70
Requiring use of one crutch or two canes only for ambulating long distances (500 feet or more), due to pain, instability, or weakness (muscle strength grade 3 to 4 out of 5)	.....	50
Requiring use of one cane for ambulation, due to pain, instability, or weakness; or with recalcitrant thigh pain of longer than 2 years' duration	.....	40
Minimum evaluation following arthroplasty	.....	30
Note: Do not combine an evaluation under this diagnostic code with an evaluation for pain under § 4.59.		
5055 Total or partial knee arthroplasty or replacement (with prosthesis):		
From date of hospital admission for arthroplasty, either initial or revision	.....	100
Requiring use of two crutches or a walker for ambulation	.....	[1] 90
Requiring use of one crutch or two canes for most ambulation, due to pain, instability, or weakness (muscle strength grade zero to 2 out of 5); or with loss of more than 40 degrees of the full arc of motion	.....	70
Requiring use of one crutch or two canes only for ambulating long distances (500 feet or more), due to pain, instability, or weakness (muscle strength grade 3 to 4 out of 5); or with loss of 21 to 40 degrees of the full arc of motion	.....	50
Requiring use of one cane or brace for ambulation, due to pain, instability, or weakness; or with loss of 10 to 20 degrees of the full arc of motion	.....	40
Minimum evaluation following arthroplasty	.....	30
Note (1): A full arc of motion of the knee after arthroplasty is a range of motion of 0 to 110 degrees.		
Note (2): Do not combine an evaluation under this diagnostic code with an evaluation for pain under § 4.59.		
5056 Total or partial ankle arthroplasty or replacement (with prosthesis):		
From date of hospital admission for arthroplasty, either initial or revision	.....	100
Evaluate residuals based on ankylosis (under diagnostic code 5270) or limitation of motion (under diagnostic code 5271), whichever results in a higher evaluation, combining this evaluation with an evaluation for pain under § 4.59 when appropriate.		
Minimum evaluation following arthroplasty	.....	20

[1] Review for entitlement to special monthly compensation. Refer to § 3.350 for specific instructions regarding claims involving loss of loss of use of limbs.

COMBINATIONS OF DISABILITIES

	Rating
5104 Anatomical loss or loss of use of one hand and anatomical loss or loss of use of one foot	[1] 100
5106 Anatomical loss or loss of use of one hand and anatomical loss or loss of use of the other hand	[1] 100
5107 Anatomical loss or loss of use of one foot and anatomical loss or loss of use of the other foot	[1] 100

[1] Review for entitlement to special monthly compensation. Refer to § 3.350 for specific instructions regarding claims involving loss of loss of use of limbs.

AMPUTATIONS: UPPER EXTREMITY

	Rating	
	Dominant	Nondominant
Amputation of upper extremity:		
5120 Disarticulation	[1] 90	[1] 90
5121 Above insertion of deltoid	[1] 90	[1] 80
5122 Below insertion of deltoid	[1] 80	[1] 70
Amputation of forearm:		
5123 Amputation of forearm above insertion of pronator teres (located at the middle one-third of the lateral surface of the radius), also called short, below elbow amputation	[1] 80	[1] 70
5124 Amputation of forearm below insertion of pronator teres (at the middle one-third of the lateral surface of the radius), also called long, below elbow amputation	[1] 70	[1] 60
5125 Wrist disarticulation	[1] 70	[1] 60
Multiple Finger Amputations		
Note (1): These ratings apply only to amputations at the proximal interphalangeal joints or through proximal phalanges.		
Note (2): Amputation through middle phalanges will be rated as unfavorable ankylosis of the fingers.		
Note (3): Except for negligible losses, amputations at distal joints or through distal phalanges will be rated as favorable ankylosis of the fingers.		
Note (4): Amputation or resection of more than one-half the metacarpal bones in injuries of multiple fingers will be assigned an evaluation of 10 percent added to (not combined with) the evaluations for multiple finger amputations, subject to the provisions of § 4.68.		
Note (5): Combinations of finger amputations at various levels, or finger amputations with ankylosis or limitation of motion of the fingers will be rated on the basis of the grade of disability, *i.e.*, amputation, unfavorable ankylosis, most representative of the levels or combinations. With an even number of fingers involved, and adjacent grades of disability, select the higher of the two grades.		
5126 Amputation of five fingers of one hand	[1] 70	[1] 60
Amputation of four fingers of one hand:		
5133 Thumb, index and ring	60	50
5134 Thumb, index and little	60	50
5135 Thumb, long and ring	60	50
5136 Thumb, long and little	60	50
5137 Thumb, ring and little	60	50
5138 Index, long and ring	50	40
5139 Index, long and little	50	40
5140 Index, ring and little	50	40
5141 Long, ring and little	40	30
Amputation of two fingers of one hand:		
5142 Thumb and index	50	40
5143 Thumb and long	50	40
5144 Thumb and ring	50	40
5145 Thumb and little	50	40
5146 Index and long	40	30
5147 Index and ring	40	30
5148 Index and little	40	30
5149 Long and ring	30	20
5150 Long and little	30	20
5151 Ring and little	30	20
Single Finger Amputations		
Note: These single finger amputation ratings are the only ratings that may be applied to amputations of all or part of a single finger.		
5152 Amputation of thumb:		
With metacarpal resection	40	30
At metacarpophalangeal joint or through proximal phalanx	30	20
At distal joint or through distal phalanx	20	20
5153 Amputation of index finger:		
With metacarpal resection (more than one-half the bone lost)	30	20
Without metacarpal resection, at proximal interphalangeal joint or proximal thereto	20	20
Through middle phalanx or at distal joint	10	10

AMPUTATIONS: UPPER EXTREMITY—Continued

	Rating	
	Dominant	Nondominant
5154 Amputation of long finger:		
With metacarpal resection (more than one-half the bone lost)	20	20
Without metacarpal resection, at or proximal to the interphalangeal joint	10	10
5155 Amputation of ring finger:		
With metacarpal resection (more than one-half the metacarpal bone lost)	20	20
Without metacarpal resection, at or proximal to the Interphalangeal joint	10	10
5156 Amputation of little finger:		
With metacarpal resection (more than one-half the bone lost	20	20
Without metacarpal resection, at or proximal to the interphalangeal joint	10	10
* * * * * * *		
5160 Disarticulation of hip, with loss of extrinsic pelvic girdle muscles		[1] 90
5161 Amputation through the upper one-third of the thigh, one-third of the distance from the perineum to the knee joint measured from perineum		[1] 80
5162 Amputation through the middle or lower third of thigh		[1] 60
5163 Amputation of lower extremity, at or below knee, with defective stump, thigh amputation indicated		[1] 60
5164 Amputation of lower extremity below the knee at a level not permitting prosthesis controlled by natural knee action		[1] 60
5165 Amputation of lower extremity below the knee at a level permitting prosthesis controlled by natural knee action		[1] 40
5166 Amputation of forefoot proximal to the metatarsal bones (with more than one-half of the metatarsals amputated)		[1] 40
5167 Loss of use of foot		[1] 40
5170 Amputation of all toes, without metatarsal loss		30
5171 Amputation of great toe:		
With removal of metatarsal head		30
Without removal of metatarsal head		10
5172 Amputation of one or two toes, other than great toe:		
With removal of metatarsal head		20
Without removal of metatarsal head		0
5173 Amputation of three or four toes, without metatarsal involvement:		
Including great toe		20
Not including great toe		10

[1] Review for entitlement to special monthly compensation. Refer to § 3.350 for specific instructions regarding claims involving loss or loss of use of limbs.

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HUMERUS, CLAVICLE, AND SCAPULA

	Rating	
	Dominant	Nondominant
5200 Ankylosis of glenohumeral articulation (shoulder joint):		
Note: The scapula and humerus move as one unit.		
Unfavorable, abduction limited to 25 degrees from side	50	40
Intermediate, abduction limited to between 26 degrees and 59 degrees	40	30
Favorable, abduction limited to 60 degrees, but can reach mouth and head	30	20
5201 Limitation of active abduction of shoulder:		
Abduction limited to 25 degrees from side	40	30
Abduction limited to between 26 degrees and 89 degrees from side	30	20
Abduction limited to shoulder level (90 degrees)	20	20
5202 Residuals of fracture of humerous and residuals of dislocation of glenohumeral (shoulder) joint:		
At least one recurrence of dislocation	10	10
Malunion of fracture of humerus:		
Symptomatic, with more than 45 degrees of angulation in the anterior-posterior plane or varus-valgus plane	30	20
Symptomatic, with 30 to 45 degrees of angulation in the anterior-posterior plane or varus-valgus plane	20	20
5203 Impairment of clavicle or scapula:		
Resection of the end of the clavicle; nonunion of the clavicle or scapula; malunion of the clavicle or scapula with skin breakdown, skin irritation, or thoracic outlet syndrome (upper extremity symptoms due to compression of nerves or blood vessels)	20	10
Dislocation of the acromioclavicular joint with pain and localized osteoarthritis; or painful sternoclavicular anterior dislocation	10	10
Malunion of clavicle or scapula without skin breakdown, skin irritation, or thoracic outlet problems	0	0
With untreated sternoclavicular posterior dislocation, separately evaluate complications, such as from pressure on blood vessels or trachea.		

HUMERUS, CLAVICLE, AND SCAPULA—Continued

	Rating	
	Dominant	Nondominant
Note (1): These criteria encompass pain, so do not combine an evaluation under diagnostic code 5203 with an evaluation for pain under § 4.59.		
Note (2): Thoracic outlet syndrome is a group of symptoms, mainly of the upper extremity, that may include pain, weakness, numbness, and tingling of an arm or hand, as well as swelling and enlargement of veins of the arm or chest. It is due to compression of the area behind each clavicle where an artery, a vein, and nerves cross. Thoracic outlet syndrome can be evaluated separately as long as it is not used to support an evaluation under diagnostic code 5203.		
5204 Rotator cuff dysfunction and impingement syndrome:		
Limitation of internal rotation, external rotation, flexion, and abduction	20	20
Minimum, with positive impingement sign	10	10
Note (1): Combine an evaluation based on the criteria under diagnostic code 5204 with an evaluation for pain under § 4.59 when appropriate.		
Note (2): Evaluate under diagnostic code 5201 if a higher evaluation could be assigned based on limitation of abduction, but do not combine with an evaluation under diagnostic code 5204.		

THE ELBOW AND FOREARM

	Rating	
	Dominant	Nondominant
5205 Ankylosis of elbow:		
Unfavorable, at an angle of less than 50 degrees or with complete loss of supination or pronation	80	70
Intermediate, at an angle of more than 90 degrees or between 70 degrees and 50 degrees	60	50
Favorable, at an angle between 90 degrees and 70 degrees	50	40
5206 Limitation of flexion of elbow:		
Flexion limited to 45 degrees	50	40
Flexion limited to 55 degrees	40	30
Flexion limited to 70 degrees	30	20
Flexion limited to 90 degrees	20	20
Flexion limited to 100 degrees	10	10
Flexion limited to 110 degrees	0	0
5207 Limitation of extension of elbow:		
Extension is limited to minus 110 degrees (lacks 110 degrees of full extension)	50	40
Extension is limited to minus 100 degrees (lacks 100 degrees of full extension)	40	30
Extension is limited to minus 90 degrees (lacks 90 degrees of full extension)	30	20
Extension is limited to minus 75 degrees (lacks 75 degrees of full extension)	20	20
Extension is limited to between minus 45 and minus 74 degrees (lacks at least 45 but less than 75 degrees of full extension)	10	10
5208 Flexion of elbow is limited to 100 degrees, and extension is limited to minus 45 degrees: (lacks 45 degrees of full extension)	20	20
5209 Other impairment of elbow:		
Joint fracture with cubitus varus deformity (any degree of varus greater than zero degrees); or ununited or malunited head of radius	20	20
Excised radial head	10	10
5210 Nonunion of radius and ulna, with motion at the fracture site	50	40
5211 Impairment of ulna:		
Nonunion in upper half, with false movement, deformity, and loss of bone substance (1 inch (2.5 cm.) or more)	40	30
Nonunion in upper half, with false movement, with either deformity or loss of bone substance (1 inch (2.5 cm.) or more)	30	20
Nonunion in upper half, with false movement, without deformity and without loss of bone substance (1 inch (2.5 cm.) or more); or nonunion in lower half	20	20
Malunion of, symptomatic	10	10
Note: Alternatively, evaluate malunion of the ulna based on limitation of motion if that would result in a higher evaluation.		
5212 Impairment of radius:		
Nonunion in lower half, with false movement, deformity, and loss of bone substance (1 inch (2.5 cm.) or more)	40	30
Nonunion in lower half, with false movement, with either deformity or loss of bone substance (1 inch (2.5 cm.) or more)	30	20
Nonunion in lower half, with false movement, without deformity and without loss of bone substance (1 inch (2.5 cm.) or more); or nonunion in upper half	20	20
Malunion of, symptomatic	10	10
Note: Alternatively, evaluate malunion of the radius based on limitation of motion if that would result in a higher evaluation.		
5213 Impairment of supination and pronation of forearm:		
(1) With bone fusion:		
The hand fixed in supination (between one and 85 degrees of supination) or in hyperpronation (in greater than 80 degrees of pronation)	40	30

THE ELBOW AND FOREARM—Continued

	Rating	
	Dominant	Nondominant
The hand fixed in full pronation (at 80 degrees of pronation)	30	20
The hand fixed at 40 to 45 degrees of pronation	20	20
(2) Limitation of pronation:		
Pronation limited to 40 degrees	30	20
Pronation limited to 60 degrees	20	20
(3) Limitation of supination: Supination limited to 30 degrees	10	10
Note: Evaluations for forearm and wrist injuries, diagnostic codes 5205 through 5213, will be combined with separate evaluations for limitation of motion of the fingers, subject to the provisions of § 4.68.		

THE WRIST

	Rating	
	Dominant	Nondominant
5214 Ankylosis of the wrist:		
Unfavorable, meaning fixed in any degree of palmar flexion, or with ulnar or radial deviation	50	40
Intermediate, meaning fixed in any position other than that for favorable or unfavorable	40	30
Favorable, meaning fixed in 20 degrees to 30 degrees dorsiflexion, without ulnar or radial deviation	30	20
5215 Limitation of motion of wrist:		
Dorsiflexion limited to 14 degrees, or palmar flexion limited to zero degrees (no palmar flexion possible)	10	10
* * * * * * *		
5231 Fracture of phalanx of finger or thumb:		
Evaluate based on residuals, such as limitation of motion or ankylosis of digit under the appropriate code(s), and combine with an evaluation for pain under § 4.59 when appropriate.		
5232 Fracture of carpal or metacarpal bone:		
Evaluate based on residuals under the appropriate code(s), such as limitation of motion or ankylosis of wrist, and combine with an evaluation for pain under § 4.59 when appropriate.		
5233 Fracture of phalanx of toe:		
Evaluate based on residuals under the appropriate code(s), such as limitation of motion or ankylosis of toe (for example, using criteria for diagnostic codes 5278 through 5283), and combine with an evaluation for pain under § 4.59 when appropriate.		

THE HIP AND THIGH

	Rating
5250 Ankylosis of hip:	
Unfavorable ankylosis, meaning fixed in more than 60 degrees of flexion so that the foot cannot reach the ground, and crutches are required for ambulation	[1] 90
Intermediate ankylosis, meaning fixed in 40 to 60 degrees of flexion, and assistive devices may be needed	70
Favorable ankylosis, meaning fixed in 20 degrees to 39 degrees of flexion, in slight adduction or abduction, and assistive devices are not required	60
5251 Limitation of extension of hip (normal full extension is zero degrees):	
If there is limitation of extension of the affected hip that is at least 10 degrees more than the limitation of extension of the non-affected hip, and there is a positive Thomas test (test for flexion contracture of hip)	10
5252 Limitation of flexion of hip:	
Flexion limited to 10 degrees	40
Flexion limited to 20 degrees	30
Flexion limited to 30 degrees	20
Flexion limited to 45 degrees	10
5253 Limitation of abduction, adduction, or rotation of hip:	
Abduction limited to 10 degrees	20
Adduction limited, so that cannot cross legs; or rotation limited, so that cannot toe-out more than 15 degrees	10
5254 Resection arthroplasty of hip (removal of femoral head and neck without replacement by a prosthesis)	80
5255 Residuals of fracture of femur:	
Fracture of the femoral neck, intertrochanteric area, or shaft with symptomatic malunion or symptomatic non-union	60
Fracture of the femoral neck, intertrochanteric area, or shaft with asymptomatic non-union; or fracture of the femoral head or subcapital area with excision of 25% or more of the weightbearing portion	40
Fracture of the femoral shaft with symptomatic malunion and either more than 10 degrees of angulation in the varus-valgus plane or more than 15 degrees of angulation in the anterior-posterior plane	30
Note (1): Evaluate fracture of the femoral head or subcapital area with excision of less than 25% of the weightbearing portion as aseptic necrosis of the femoral head, diagnostic code 5265.	
Note (2): Malunion of an intertrochanteric fracture is indicated by a varus deformity, shortening, or rotation.	

[1] Review for entitlement of special monthly compensation. Refer to § 3.350 for specific instructions regarding claims involving loss or loss of use of limbs.

THE KNEE AND LEG

	Rating
5256 Ankylosis of knee:	
Ankylosed in more than 45 degrees of flexion	60
Ankylosed in flexion, between 21 and 45 degrees	50
Ankylosed in flexion, between 11 and 20 degrees	40
Ankylosed in full extension, or in flexion between zero and 10 degrees	30
5257 Knee instability:	
Documented instability that is not correctable by bracing and that interferes with activities of daily living	30
Documented instability that is correctable by bracing, but that interferes at times with activities of daily living and prevents activities such as running and jumping	20
Documented instability that is correctable by bracing and that does not interfere with activities of daily living, but at times may interfere with activities such as running and jumping	10
Note: Combine with an evaluation for pain (under § 4.59) when appropriate.	
5258 Injury of meniscus (semilunar cartilage) of knee (pre- or post-operatively):	
With episodes of giving way, locking, or joint effusion that interfere at times with activities of daily living and prevent activities such as running and jumping	20
With episodes of giving way, locking, or joint effusion that do not interfere with activities of daily living, but that at times interfere with activities such as running and jumping	10
Alternatively, depending on the specific findings, evaluate based on instability, degenerative arthritis, etc., under the appropriate diagnostic code.	
Note: Combine an evaluation under diagnostic code 5258 with an evaluation for pain (under § 4.59) when appropriate.	
5260 Limitation of flexion of knee (normal full flexion is 140 degrees):	
Flexion limited to 30 degrees	30
Flexion limited to 60 degrees	20
Flexion limited to 90 degrees	10
5261 Limitation of extension of knee (normal full extension is zero degrees):	
Extension is limited to more than minus 30 degrees (lacks more than 30 degrees of full extension)	50
Extension is limited to between minus 16 and 30 degrees (lacks 16 to 30 degrees of full extension)	30
Extension is limited to between minus 5 and 15 degrees (lacks 5 to 15 degrees of full extension)	10
5262 Nonunion or malunion of fracture of tibia or fibula:	
Nonunion, with loose motion, requiring brace	40
Asymptomatic nonunion	30
Symptomatic malunion with either more than 10 degrees of angulation in the varus-valgus plane or more than 15 degrees of angulation in the anterior-posterior plane	20
Symptomatic malunion with neither more than 10 degrees of angulation in the varus-valgus plane nor more than 15 degrees of angulation in the anterior-posterior plane	10
5265 Aseptic necrosis (or avascular necrosis or osteonecrosis) of the femoral head:	
With collapse of the femoral head, and requiring constant ambulatory support	60
With collapse of the femoral head, and requiring intermittent ambulatory support	40
Without collapse of the femoral head	10
Note: Combine an evaluation under diagnostic code 5265 with an evaluation of pain under § 4.59 when appropriate. Alternatively, evaluate as limitation of motion of the hip, combined with an evaluation for pain under § 4.59 when appropriate, if that would result in a higher evaluation.	
5266 Patellar fracture and instability:	
Symptomatic nonunion of fracture of patella; or patellectomy; or recurrent patellar dislocation occurring six or more times during the past 12-month period	30
Patellofemoral subluxation (partial or incomplete dislocation of the patella) occurring three or more times per month during the past 12-month period; or recurrent patellar dislocation occurring three to five times during the past 12-month period	20
Patellofemoral subluxation occurring one to two times per month during the past 12-month period; or recurrent patellar dislocation occurring one or two times during the past 12-month period	10
Note: The evaluation criteria for diagnostic code 5266 encompass pain, so a separate evaluation for pain under § 4.59 is not warranted.	
5267 Patellofemoral pain syndrome (chondromalacia of patella, retropatellar pain syndrome, patellofemoral syndrome):	
Evaluate based on pain under § 4.59.	

THE ANKLE

	Rating
5270 Ankylosis of the ankle:	
Ankylosed in more than 40 degrees of plantar flexion; or ankylosed in more than 10 degrees of dorsiflexion; or ankylosed with abduction, adduction, inversion or eversion deformity	40
Ankylosed in 30 to 40 degrees of plantar flexion; or ankylosed in zero to 10 degrees of dorsiflexion	30
Ankylosed in less than 30 degrees of plantar flexion	20
5271 Limitation of motion of the ankle:	
Less than 5 degrees passive dorsiflexion; or less than 10 degrees passive plantar flexion	20
Less than 15 degrees passive dorsiflexion; or less than 30 degrees passive plantar flexion	10
5272 Ankylosis of subtalar or tarsal joint:	
In poor weightbearing position (not in plantograde position)	20
In good weightbearing position (no varus, no valgus)	10
5273 Malunion of calcaneus (os calcis) or talus:	
Deformity of the talocalcaneal joint or spreading of the calcaneus deforming the weightbearing surface of the heel	30

THE ANKLE—Continued

	Rating
Malunion of either the talus or calcaneus without deformity of the subtalar joint or weightbearing surface of the heel	10
5274 Total or partial talectomy without subsequent arthrodesis	40

SHORTENING OF THE LOWER EXTREMITY

	Rating
5275 Shortening of bones of lower extremity:	
Of 4 inches (10.2 cm.) or more	[1] 60
Of at least 3½ but less than 4 inches (8.9 to less than 10.2 cm.)	[1] 50
Of at least 3 but less than 3½ inches (7.6 to less than 8.9 cm.)	40
Of at least 2½ but less than 3 inches (6.4 to less than 7.6 cm.)	30
At least 2 but less than 2½ inches (5.1 to less than 6.4 cm.)	20
At least 1¼ but less than 2 inches (3.2 to less than 5.1 cm.)	10
Note (1): Each lower extremity will be measured from the anterior superior spine of the ilium to the internal malleolus of the tibia.	
Note (2): Do not combine an evaluation under diagnostic code 5275 with an evaluation for healed fracture, malunion, or nonunion of a fracture in the same extremity.	

[1] Review for entitlement to special monthly compensation. Refer to § 3.350 for specific instructions regarding claims involving loss or loss of use of limbs.

THE FOOT

	Rating
5276 Flatfoot (pes planus):	
Deformity, including, on weightbearing, significant eversion of the heel, flattened arch, collapse of the midfoot structures with the talar head displaced both medial and plantar, and forefoot abduction; pain in the arch; and symptoms not significantly relieved by the use of appliances, orthoses, or orthopedic shoes	20
Deformity, including a perpendicular position to slight eversion of the heel, the presence of a slight arch on non-weightbearing which totally collapses on weightbearing, and forefoot abduction; pain in the arch and legs; and symptoms partially relieved by the use of appliances, orthoses, or orthopedic shoes	10
Deformity, but a normal arch on non-weightbearing and a perpendicular heel position; tenderness in the arch or muscles and tendons attaching to the midfoot; and symptoms completely relieved by, or not requiring, the use of appliances, orthoses, or orthopedic shoes	0
Note (1): Evaluate each foot separately and combine the evaluations.	
Note (2): Pain is encompassed by these evaluation criteria, so do not combine an evaluation under diagnostic code 5276 with an evaluation for pain under § 4.59.	
5278 Pes cavus (clawfoot):	
Symptoms of pain and tenderness, and callosities, if present, not significantly relieved by the use of appliances, orthoses, or orthopedic shoes	20
Symptoms of pain and tenderness, and callosities, if present, partially relieved by the use of appliances, orthoses, or orthopedic shoes	10
Symptoms of pain and tenderness, and callosities, if present, completely relieved by, or do not require, the use of appliances, orthoses, or orthopedic shoes	0
Note (1): Evaluate each foot separately and combine the evaluations.	
Note (2): In the absence of trauma or other specific cause of aggravation, consider pes cavus to be a congenital or developmental abnormality.	
5279 Metatarsalgia (including Morton's neuroma):	
Pain in the ball of the foot not significantly relieved by the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done	10
Pain in the ball of the foot largely or completely relieved by, or does not require, the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done	0
Note: Evaluate each foot separately and combine the evaluations.	
5280 Hallux Valgus:	
Symptoms not significantly relieved by the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done	10
Symptoms largely or completely relieved by, or not requiring, the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done	0
Note (1): Evaluate each foot separately and combine the evaluations.	
Note (2): Pain is encompassed by these evaluation criteria, so do not combine an evaluation under diagnostic code 5280 with an evaluation for pain under § 4.59.	
5281 Hallux limitus, hallux rigidus:	
Pain with any motion of the joint, including walking, with ankylosis (no motion) of the first metatarsal-phalangeal joint and gait abnormality	20
Pain on walking, with limitation of motion of the first metatarsal-phalangeal joint	10
Pain only on extremes of motion, with limitation of motion of the first metatarsal-phalangeal joint	0
Note: Evaluate each foot separately, regardless of number of toes affected by hammertoe, and combine the evaluations.	
5282 Hammertoe, contracted or deviated toes:	
Hammertoe with pain and calluses not significantly relieved by the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done	10

THE FOOT—Continued

	Rating
Hammertoe with pain and calluses largely or completely relieved by, or not requiring, the use of appliances, orthoses, or orthopedic shoes, or by surgery, if that was done	0
Note (1): Evaluate each foot, but not each toe, separately, and combine the evaluations.	
Note (2): Do not assign an evaluation for the same foot both under diagnostic code 5282 and under diagnostic code 5278 (pes cavus (clawfoot)).	
5283 Malunion or nonunion of tarsal or metatarsal bones (except talus and calcaneus):	
Signs and symptoms (such as pain, calluses, abnormal or limited motion of affected bones or joints) that interfere with activities of daily living and that are not significantly relieved by appliances, orthoses, or orthopedic shoes, or by surgery, if that was done	30
Signs and symptoms (such as pain, calluses, abnormal or limited motion of affected bones or joints) that are partly relieved by appliances, orthoses, or orthopedic shoes, or by surgery, if that was done, but that interfere at times with activities of daily living and with most athletic activity	20
Signs and symptoms (such as pain, calluses, abnormal or limited motion of affected bones or joints) that are largely or completely relieved by appliances, orthoses, or orthopedic shoes, or by surgery, if that was done and that do not interfere with activities of daily living but that may at times prevent activities such as running and jumping	10
5284 Neurotrophic disorders of the foot (Charcot joint, diabetic foot, *etc.*):	
Chronic ulceration not controlled by the use of orthoses	30
Recurrent ulcers controlled by the use of orthoses	20
Pain not relieved by orthoses or shoe modification	10
Pain relieved by orthoses or shoe modification	0
Note (1): If osteomyelitis of the foot is present, evaluate under diagnostic code 5000 (osteomyelitis), and do not assign an evaluation under diagnostic code 5284.	
Note (2): A 20- or 30-percent evaluation under diagnostic code 5284 may be combined with an evaluation for pain under § 4.59.	

* * * * * * *

THE SKULL

	Rating
5296 Loss of part of both inner and outer tables of skull without cranioplasty (covering of defect by bone, metal, or other material).	
With brain hernia	80
Without brain hernia:	
Area larger than 1.1 sq. inches (7.4 sq. cm.)	50
0.7 to 1.1 sq. inches (4.6 to 7.4 sq. cm.)	30
Area smaller than 0.7 sq. inches (4.6 sq. cm.)	10
Note (1): Rate intracranial complications, such as seizures or paralysis, separately.	
Note (2): Skull loss covered by bone or a prosthesis will not be used in calculating the area of skull loss.	

THE RIBS

	Rating
5297 Removal of ribs:	
More than six	50
Five or six	40
Three or four	30
Two	20
Removal of one, or resection of two or more ribs without regeneration	10
Note (1): Do not combine an evaluation under diagnostic code 5297 with an evaluation under diagnostic code 6844 (post-surgical residuals of lobectomy, pneumonectomy, etc.) or 6845 (chronic pleural effusion or fibrosis).	
Note (2): Evaluate rib resection as rib removal when thoracoplasty has been performed for collapse therapy or to obliterate space, and combine with the evaluation for lung collapse, lobectomy, pneumonectomy, or the graduated evaluations for pulmonary tuberculosis.	

THE COCCYX

	Rating
5298 Partial or complete removal of the coccyx:	
With painful residuals	10

(Authority: 38 U.S.C. 1155)

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Part III

Securities and Exchange Commission

17 CFR Parts 270 and 275
Compliance Programs of Investment Companies and Investment Advisers; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 275

[Release Nos. IC–25925, IA–2107; File No. S7–03–03]

RIN 3235–AI77

Compliance Programs of Investment Companies and Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is publishing for comment new rules under the Investment Company Act of 1940 and the Investment Advisers Act of 1940 that would require each investment company and investment adviser registered with the Commission to adopt and implement policies and procedures reasonably designed to prevent violation of the federal securities laws, review those policies and procedures annually for their adequacy and the effectiveness of their implementation, and appoint a chief compliance officer to be responsible for administering the policies and procedures. The Commission also seeks comment on other ways to involve the private sector in fostering compliance by investment companies and investment advisers with the federal securities laws. The proposed rules are designed to protect investors by being the first step towards enhanced compliance achieved through private initiative.

DATES: Comments must be received on or before April 18, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments may be sent to us in either paper or electronic format. Comments should not be sent by both methods.

Comments in paper format should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments in electronic format may be submitted at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–03–03; if e-mail is used, this file number should be included on the subject line. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will also be posted on the Commission's Internet Web site *(http://www.sec.gov).*[1]

FOR FURTHER INFORMATION CONTACT: Hester Peirce, Senior Counsel, Office of Regulatory Policy at (202) 942–0690, or Jamey Basham, Special Counsel, Office of Investment Adviser Regulation at (202) 942–0719.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''SEC'' or ''Commission'') is requesting public comment on proposed rule 38a–1 [17 CFR 270.38a–1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (''Investment Company Act''), proposed rule 206(4)–7 [17 CFR 275.206(4)–7] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (''Investment Advisers Act'' or ''Advisers Act''), and proposed amendments to rule 204–2 under the Advisers Act [17 CFR 275.204–2].

Table of Contents

I. Background
II. Discussion
A. Adoption and Implementation of Policies and Procedures
B. Annual Review
C. Chief Compliance Officer
D. Recordkeeping
E. Request for Comment on Further Private Sector Involvement
1. Compliance Reviews
2. Expanded Audit Requirement
3. Self-Regulatory Organization
4. Fidelity Bonding Requirement for Advisers
III. General Request for Comment
IV. Cost-Benefit Analysis
A. Benefits
B. Costs
C. Request for Comment
V. Consideration of Promotion of Efficiency, Competition, and Capital Formation
VI. Paperwork Reduction Act
A. Rule 38a–1
B. Rule 206(4)–7
C. Rule 204–2
D. Request for Comment
VII. Summary of Initial Regulatory Flexibility Analysis
VIII. Statutory Authority
Text of Proposed Rules

I. Background

Mutual funds and other types of investment companies provide access to the capital markets for millions of small and large investors.[2] The tremendous growth of funds reflects the confidence investors have in funds and the regulatory protections provided by the federal securities laws.

The Commission regulates mutual funds and other investment companies under the Investment Company Act, and regulates the investment advisers that provide investment management services to those funds and to other clients under the Advisers Act.[3] The Investment Company Act provides a comprehensive regulatory structure designed to protect largely passive investors in funds, while the Advisers Act, which contains a less detailed regulatory scheme, imposes a broad fiduciary duty on advisers, requiring them to act in the best interest of their clients.[4] These statutes contain common elements: they require registration with us;[5] proscribe certain types of harmful conduct;[6] and give us the authority to require the disclosure of certain information[7] and the maintenance of certain records.[8] They give us authority to examine the records of funds and advisers.[9] During fiscal year 2002, our staff conducted examinations of 278 fund complexes[10] and 1,570 investment advisers.

The Commission's examination of funds and advisers is a key element of our investor protection program. During

[1] We do not edit personal or identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] In this release, we use the term ''fund'' to mean a registered investment company or a business development company defined in section 2(a)(48) of the Investment Company Act [15 U.S.C. 80a–2(a)(48)], and the term ''mutual fund'' to mean a registered investment company that is an open-end management company defined in section 5(a) of the Investment Company Act [15 U.S.C. 80a–5(a)].

[3] Funds and advisers are also subject to other federal securities laws, including the Securities Act of 1933 [15 U.S.C. 77] and the Securities Exchange Act of 1934 [15 U.S.C 78] (''Exchange Act'').

[4] *Transamerica Mortgage Advisors v. Lewis,* 444 U.S. 11, 17 (1979).

[5] *See* Section 8(a) of the Investment Company Act [15 U.S.C. 80a–8(a)] and section 203 of the Advisers Act [15 U.S.C. 80b–3].

[6] *See, e.g.,* sections 10(f) [15 U.S.C. 80a–10(f)] (prohibiting funds from acquiring securities during the existence of an underwriting syndicate in which an affiliate participates), 12(d) [15 U.S.C. 80a–12(d)] (prohibiting funds from acquiring securities of other funds above certain limits), and 17(a) [15 U.S.C. 80a–17(a)] (prohibiting certain persons from engaging in certain purchase, sale, and loan transactions with an affiliated fund) of the Investment Company Act; and section 206 of the Advisers Act [15 U.S.C. 80b–6] (prohibiting fraud).

[7] *See, e.g.,* section 30(e) of the Investment Company Act [15 U.S.C. 80a–29(e)] (authorizing Commission to require funds to transmit certain information to stockholders) and section 204 of the Advisers Act [15 U.S.C. 80b–4] (authorizing Commission to require advisers to disseminate certain information).

[8] *See* Section 31(a) of the Investment Company Act [15 U.S.C. 80a–30(a)] (authorizing Commission to require funds to maintain records) and section 204 of the Advisers Act (authorizing Commission to require advisers to maintain records).

[9] *See* Section 31(b) of the Investment Company Act [15 U.S.C. 80a–30(b)] (authorizing Commission to examine fund records) and section 204 of the Advisers Act (authorizing Commission to examine adviser records).

[10] In this release, we use the term ''fund complex'' to indicate a group of funds that share a compliance program and often also have a common investment adviser or distributor.

a compliance examination, our staff visits the offices of the fund or adviser, reviews business records and interviews personnel to determine whether the fund or adviser is acting in compliance with the federal securities laws. Our examinations permit us to identify compliance problems at an early stage, identify practices that may be harmful to investors, and provide a deterrent to unlawful conduct. In many respects, our examiners are like ''cops on the beat'' watching for unlawful conduct in a neighborhood.

Like police officers, our examiners cannot be everywhere at all times. Approximately 5,030 funds and 7,790 advisers are currently registered with us.[11] Collectively, these funds and advisers control over $21 trillion of assets, and engage in tens of millions of transactions each year. Our current resources permit us to conduct routine examinations of each of the 966 fund complexes and each adviser only once every five years, and during these examinations we are unable to review every transaction. Instead, our compliance examinations focus on the effectiveness of the internal controls that the fund or adviser has established to prevent and detect violations of the federal securities laws.

Our experience is that funds and advisers with effective internal compliance programs administered by competent compliance personnel are much less likely to violate the federal securities laws. If violations do occur, they are much less likely to result in harm to investors. In contrast, we have learned to regard weak controls as an indicator that undetected (and uncorrected) violations may have occurred, and we have assumed that, until improved controls are implemented, investors are at risk. Accordingly, our staff focuses its examination efforts on testing the effectiveness of controls and related compliance procedures, and requests that management correct any weaknesses that the staff discovers. This focus allows us to leverage our limited examination resources; we are able to direct additional resources to firms with weaker compliance controls, and may examine them more closely and more frequently.[12]

Our ability to protect fund investors and advisory clients has in many respects come to rely upon the effectiveness of these compliance programs. They provide the first line of investor protection. Many funds and advisers have established effective programs staffed with competent and trained professionals.[13] However, neither the federal securities laws nor our rules *require* funds and advisers to adopt and implement comprehensive compliance programs, and not all firms registered with us have adopted and implemented adequate compliance programs. The consequences of inadequate compliance programs are well documented in our releases through which we publicize our enforcement actions.[14]

Because of the importance of these compliance programs to investors and to the administration of our examination authority under the Investment Company Act and Advisers Act, we are proposing two new rules (one for funds and one for advisers) that would require funds and advisers to (i) adopt and implement policies and procedures designed to prevent violations of the securities laws, (ii) review these policies and procedures at least annually for their adequacy and the effectiveness of their implementation, and (iii) designate a chief compliance officer responsible for administering the policies and procedures.[15] We discuss each of the rules in more detail below.

We also are asking for comment on other possible roles for the private sector in overseeing compliance by funds and advisers with the federal securities laws. Specifically, we ask comment on the following possible avenues towards enhanced private sector involvement: (i) Periodic third-party compliance reviews of funds and advisers, (ii) an expansion of the scope of the fund audits performed by independent public accountants, (iii) the formation of one or more self-regulatory organizations, and (iv) a fidelity bonding requirement for advisers.

II. Discussion

The Commission is proposing new rule 38a–1 under the Investment Company Act and new rule 206(4)–7 under the Advisers Act. In this release, we will refer to the rules collectively as the ''Proposed Rules.''[16] Together the Proposed Rules would require *all* investment companies and advisers registered with us to adopt and

[11] As of November 2002, these registered investment companies were organized into 966 fund complexes and comprised nearly 33,000 fund series and portfolios.

[12] *See* Lori A. Richards, Director, SEC Office of Compliance Inspections and Examinations, The Evolution of the SEC's Inspection Program for Advisers and Funds: Keeping Apace of a Changing Industry, Remarks at Conference on Compliance and Inspection Issues for Investment Advisers and Investment Companies (Oct. 30, 2002) (transcript available at: *http://www.sec.gov/news/speech/spch597.htm*) (''[E]xaminers will ask about your compliance and control policies and procedures, and evaluate their implementation and effectiveness. If we can conclude that your controls are working effectively, we will adjust the depth and amount of test-checking we do to reflect that fact. If we find weaknesses in controls, however, our test-checking will be greater, inasmuch as the likelihood of violations will be greater.''). *See also* H.R. Rep. No. 104–622 (1996) (''[T]he goal of examinations effected by the Commission staff should not be simply to duplicate the role played by a fund's internal compliance staff. If a fund has a well-functioning system of internal controls, the Commission's limited resources could be directed to other areas of fund operations, or to other funds.'').

[13] One reason that funds and advisers may have adopted and implemented comprehensive compliance procedures is to defend themselves against a charge by us that they (or their officers or supervisory personnel) failed to supervise their employees (or other supervised persons). Section 203(e)(6) of the Advisers Act [15 U.S.C. 80b–3(e)(6)] provides that a person shall not be deemed to have failed to supervise any person if: (i) The adviser had adopted procedures reasonably designed to prevent and detect violations of the federal securities laws; (ii) the adviser had a system in place for applying the procedures; and (iii) the person had reasonably discharged his supervisory responsibilities in accordance with the procedures and had no reason to believe the supervised person was not complying with the procedures.

[14] *See, e.g.,* Millennium Capital Advisors, Investment Advisers Act Release No. 2092 (Dec. 13, 2002) (unauthorized trading in client account and concealment of this trading were facilitated by adviser's vague and insufficient compliance procedures and absence of independent monitoring of portfolio manager); Gintel Asset Management, Investment Advisers Act Release No. 2079 (Nov. 8, 2002) (repeated improper cross trades, principal transactions, and personal trading resulted in part from inadequate procedures to prevent violation of the adviser's code of ethics); Back Bay Advisors, Investment Advisers Act Release No. 2070 (Oct. 25, 2002) (excessive reliance on self-reporting and self-monitoring by portfolio managers to determine whether the firm was in compliance with the federal securities laws resulted in improper cross-trades); Western Asset Management, Investment Advisers Act Release No. 1980 (Sept. 28, 2001) (subadviser had not established adequate procedures to detect portfolio manager's fraudulent activities with respect to the purchase and pricing of private placement securities); Scudder Kemper Investments, Investment Advisers Act Release No. 1848 (Dec. 22, 1999) (adviser did not have in place procedures that could have prevented and detected trader's unauthorized trading for investment company accounts); Rhumbline Advisers, Investment Advisers Act Release No. 1765 (Sept. 29, 1998) (absence of procedures enabled chief investment officer to engage in unauthorized trading and to misrepresent resultant losses); Kemper Financial Services, Investment Advisers Act Release No. 1494 (June 6, 1995) (adviser had no guidelines or procedures in place to address conflicts of interest and funds' portfolio manager misappropriated funds' investment opportunity on behalf of private profit-sharing plan he also managed).

[15] The Investment Company Institute (ICI) submitted a rulemaking proposal to the Commission in November 1994 that recommended we adopt rules similar to the ones that we are proposing today (''ICI Proposal''). A copy of that proposal is available in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549 (File No. S7–03–03).

[16] We also are proposing related amendments to rule 204–2 under the Advisers Act. *See infra* section II.D. These proposed amendments also will be included in the term ''Proposed Rules.''

implement internal compliance programs containing elements described in the rules.[17]

• We request comment on whether we should provide for one or more exceptions. Is there a subset of funds or investment advisers with operations so limited or staffs so small that the adoption of an internal compliance program would not be beneficial? If so, are there alternative measures that these funds and advisers could take to promote their compliance with the federal securities laws?

A. Adoption and Implementation of Policies and Procedures

The Proposed Rules would require funds and advisers to adopt and implement policies and procedures reasonably designed to prevent violation of the federal securities laws.[18] They must be written and, in the case of a fund, must be approved by the fund's board of directors, including a majority of the fund's independent directors.[19] A fund's policies and procedures must be designed to prevent violation of the federal securities laws by the fund, its investment adviser, principal underwriter, and administrator in connection with their provision of services to the fund.[20] An adviser's policies and procedures must be designed to prevent violation of the Advisers Act by the adviser and its supervised persons.[21]

The Proposed Rules would require funds and advisers to adopt a system of controls that promotes compliance with the securities laws. Internal control systems have long been used to assure the integrity of financial reporting. Congress recently recognized the importance of internal control systems in the Sarbanes-Oxley Act of 2002, which effectively requires public companies to adopt and periodically review the effectiveness of a system of internal controls.[22] Broker-dealers have long been required to adopt compliance procedures.[23] Banks are required to maintain internal controls that include compliance procedures.[24] Several foreign regulators already require funds or advisers registered with them to adopt compliance policies and procedures.[25] The Proposed Rules do not enumerate specific elements that funds and advisers must include in their required policies and procedures.[26] Funds and advisers are too varied in their operations for the Commission to impose a single list of required elements. The policies and procedures required by the Proposed Rules should take into consideration the nature of each organization's operations.[27] They should be designed to *prevent* violations

[17] The rules also would require business development companies, which are unregistered closed-end investment companies, to adopt and implement such programs.

[18] Proposed rules 38a–1(a)(1) and 206(4)–7(a). Under proposed rule 206(4)–7(a), the policies and procedures would need to address only compliance with the Advisers Act.

[19] Proposed rule 38a–1(a)(2). Fund directors are commonly referred to as ''independent directors'' if they are not ''interested persons'' of the fund. The term ''interested person'' is defined in section 2(a)(19) of the Investment Company Act [15 U.S.C. 80a–2(a)(19)]. If the fund is a unit investment trust, the fund's principal underwriter or depositor must approve the policies and procedures. Proposed rule 38a–1(b).

[20] The ICI, in its submission to us suggesting a similar rulemaking, favored requiring the policies and procedures to cover the fund, but not the fund's service providers, such as its adviser. See ICI Proposal, *supra* note 15, at 20. Typically, however, a fund has no employees; personnel of its adviser, principal underwriter and/or administrator conduct all of its activities. It is unclear to us whether the ICI's proposal, limited in this manner, would require a fund to adopt sufficiently comprehensive policies and procedures. Therefore, proposed rule 38a–1 would require a fund's procedures to cover the fund's adviser, principal underwriter and administrator, but only with respect to their activities in connection with the operations of the fund.

[21] A ''supervised person'' is ''any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.'' Section 202(a)(25) of the Advisers Act [15 U.S.C. 80b–2(a)(25)].

[22] *See* Sarbanes-Oxley Act of 2002 [Pub. L. No. 107–204, 116 Stat. 745 (2002)] (''Sarbanes-Oxley Act''). Section 404 of the Sarbanes-Oxley Act requires us to prescribe rules requiring each annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(a) and 78o(d)] to include internal control reports containing an assessment of the effectiveness of those controls, and further requires that the auditors for an issuer attest to the assessment made by the management of the issuer. In October 2002, we proposed rules to implement the provisions of Section 404. Disclosure Required by Sections 404, 406, and 407 of the Sarbanes-Oxley Act of 2002, Investment Company Act Release No. 25775 (Oct. 22, 2002) [67 FR 66208 (Oct. 30, 2002)]. Section 302 of the Sarbanes-Oxley Act required us to adopt rules under which the principal executives and financial officers of public issuers must certify the information contained in the issuer's quarterly and annual reports. These rules also were to require these officers to certify that: they are responsible for establishing, maintaining, and regularly evaluating the effectiveness of the issuer's internal controls; they have made certain disclosures to the issuer's auditors and the audit committee of the board of directors about the issuer's internal controls; and they have included information in the issuer's quarterly and annual reports about their evaluation and whether there have been significant changes in the issuer's internal controls or in other factors that could significantly affect internal controls subsequent to the evaluation. On August 29, 2002, we adopted rules implementing Section 302. Certification of Disclosure in Companies' Quarterly and Annual Reports, Investment Company Act Release No. 25722 (Aug. 29, 2002) [67 FR 57276 (Sept. 9, 2002)].

[23] Broker-dealers are required by the National Association of Securities Dealers (''NASD'') to establish and maintain written procedures ''that are reasonably designed to achieve compliance with applicable securities laws and regulations, and the applicable Rules of [the NASD].'' NASD Conduct Rule 3010(b). *See also* New York Stock Exchange (''NYSE'') Rule 342. Both the NASD and the NYSE recently have proposed to enhance these procedures by, among other things, requiring the annual testing and verification of broker-dealers' internal controls by persons independent of the supervision of the underlying activities. NASD Rulemaking: Supervisory Control Amendments, Exchange Act Release No. 46859 (Nov. 20, 2002) [67 FR 70990 (Nov. 27, 2002)] and NYSE Rulemaking: Amendments to Exchange Rule 342 (''Offices—Approval, Supervision and Control'') and its Interpretation, Rule 401 (''Business Conduct''), Rule 408 (''Discretionary Power in Customers' Accounts''), and Rule 410 (''Records of Orders''), Exchange Act Release No. 46858 (Nov. 20, 2002) [67 FR 70994 (Nov. 27, 2002)].

[24] Under section 39 of the Federal Deposit Insurance Act [12 U.S.C. 1831p-1], banks and thrifts are required by their regulators (the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision (collectively, ''Banking Regulators'')) to adopt internal controls that are ''appropriate to the size of the institution and the nature, scope and risk of its activities and that provide for: (1) An organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to established polices; (2) effective risk assessment; (3) timely and accurate financial, operational and regulatory reports; (4) adequate procedures to safeguard and manage assets; and (5) compliance with applicable laws and regulations.'' Standards for Safety and Soundness, 60 FR 35674 (July 10, 1995) (''Interagency Guidelines''), codified at 12 CFR part 30 (Office of the Comptroller of the Currency), 12 CFR part 208, appendix D–1 and part 263, subpart I (Board of Governors of the Federal Reserve System), 12 CFR part 364 (Federal Deposit Insurance Corporation), and 12 CFR part 570 (Office of Thrift Supervision).

[25] *See, e.g.*, Financial Services Authority (FSA), FSA Handbook of Rules and Guidance, Systems and Controls § 3.2.6 (''Areas covered by systems and controls: Compliance'') (United Kingdom); Commission des Opérations de Bourse, L'Instruction du 15 Decembre 1998 Relative aux [Organisme de Placement Collective en Valeurs Mobilieres] Prise en Application du Reglement, L'Annexe IV No. 89–02, Bulletin Mensuel COB 369 (June 2002) (France); Securities and Futures Commission, Fund Manager Code of Conduct § 1.6.3 (1997) (Hong Kong).

[26] The required polices and procedures should incorporate the policies and procedures funds have adopted pursuant to other requirements in the federal securities laws, a number of which we identify in succeeding notes. These policies and procedures need not be contained in the same document.

[27] The NASD directs its broker-dealer members to ''implement a supervisory system that is tailored specifically to the member's business.'' *See* NASD Notice to Members 99–45, at 294 (June 1999). The Banking Regulators have taken a similar approach with respect to compliance programs for banks and thrifts. *See* Interagency Guidelines, *supra* note 24, at 35676. *See also* Office of Comptroller of the Currency, *Comptroller's Handbook: Compliance Management System (Consumer Compliance Examination*), at 2 (Aug. 1996); Federal Deposit Insurance Corporation, *Compliance Examination Manual*, at B–2 (July 1999); Board of Governors of the Federal Reserve System, *Examination Manual for U.S. Branches and Agencies of Foreign Banking Organizations* § 5000.1 (Compliance), at 1 (Sept. 1997); Office of Thrift Supervision, *Compliance Self-Assessment Guide: Components of an Effective Compliance Program*, at 2 (Dec. 2002).

(by, for example, separating operational functions such as trading and reporting), *detect* violations of securities laws (by, for example, requiring a supervisor to review employees' personal securities transactions), and *correct* promptly any material violations.

We would expect that policies and procedures of funds and (to the extent relevant) advisers would, at a minimum, address:

- Portfolio management processes, including allocation of investment opportunities among clients and consistency of portfolios with guidelines established by clients, disclosures, and regulatory requirements; [28]
- Trading practices, including procedures by which the adviser satisfies its best execution obligation, uses client brokerage to obtain research and other services (''soft dollar arrangements''), and allocates aggregate trades among clients;
- Proprietary trading of the adviser and personal trading activities of supervised persons;[29]
- The accuracy of disclosures made to investors, including information in advertisements;
- Safeguarding of client assets from conversion or inappropriate use by advisory personnel;
- The accurate creation of required records and their maintenance in a manner that secures them from unauthorized alteration or use and protects them from untimely destruction;[30]
- Processes to value client holdings and assess fees based on those valuations;
- Safeguards for the protection of client records and information; [31] and
- Business continuity plans.

Fund procedures would ordinarily cover a number of additional areas, including:

- Pricing of portfolio securities and fund shares; [32]
- Processing of fund shares;
- Identification of affiliated persons with whom the fund cannot enter into certain transactions, and compliance with exemptive rules and orders that permit such transactions;[33]
- Compliance with fund governance requirements; and
- Prevention of money laundering.[34]

While funds and advisers could delegate compliance functions to service providers, their policies and procedures should provide for effective oversight of these service providers. We request comment on our proposed requirement that advisers and funds adopt compliance policies and procedures.

- Should either rule specify certain minimum policies and procedures? If so, what specific required policies and procedures should we include, and in which rule should we include them?
- We anticipate that if we adopt the Proposed Rules, we will provide guidance to funds and advisers in our adopting release similar to what we have provided above (regardless of whether the rules, as adopted, include specific minimum requirements). We request comment on the guidance that we have provided and urge commenters to provide suggestions as to additional areas our guidance should cover.
- Should the policies and procedures of funds or advisers be designed to prevent violations by persons other than those listed in the Proposed Rules?

B. Annual Review

Under the Proposed Rules, each fund and adviser must review its policies and procedures at least annually to determine their adequacy and the effectiveness of their implementation.[35] These provisions are designed to require advisers and funds to evaluate periodically whether their policies and procedures continue to work as designed and whether changes are needed to assure their continued effectiveness.

- Should we require more frequent review of the policies and procedures? Our proposed rules implementing Section 404 of the Sarbanes-Oxley Act would require that executives of issuers evaluate the company's internal controls for financial reporting *quarterly*.[36]

C. Chief Compliance Officer

The policies and procedures of a firm, no matter how well-crafted, will be ineffective unless well-trained, competent personnel administer them. Therefore, we are proposing to require that each fund and adviser designate an individual responsible for administering the compliance policies and procedures.[37] The chief compliance officer should be competent and knowledgeable regarding the applicable federal securities laws and should be empowered with full responsibility and authority to develop and enforce appropriate policies and procedures for the adviser or the fund complex.[38]

[28] Rule 206(4)–6 under the Advisers Act [17 CFR 275.206(4)–6] requires investment advisers to adopt and implement written policies and procedures that are reasonably designed to ensure that the adviser votes proxies in the best interest of clients. Similarly, funds must disclose the policies and procedures that they use to determine how to vote proxies relating to portfolio securities. Form N–1A, Item 13(f) [17 CFR 239.15A; 274.11A]; Form N–2, Item 18.16 [17 CFR 239.14; 274.11a–1]; Form N–3, Item 20(o) [17 CFR 239.17a; 17 CFR 274.11b]; and Form N–CSR, Item 7 [17 CFR 249.331; 17 CFR 274.128].

[29] Section 204A of the Advisers Act [15 U.S.C. 80b–4a] requires each adviser registered with us to have written policies and procedures reasonably designed to prevent the misuse of material non-public information by the adviser or persons associated with the adviser. Rule 17j–1(c)(1) under the Investment Company Act [17 CFR 270.17j–1(c)(1)] requires a fund and each investment adviser and principal underwriter of the fund to ''adopt a written code of ethics containing provisions reasonably necessary to prevent'' certain persons affiliated with the fund, its investment adviser or its principal underwriter from engaging in certain fraudulent, manipulative, and deceptive actions with respect to the fund.

[30] Rule 31a–2(f)(3) under the Investment Company Act [17 CFR 270.31a-2(f)(3)] and rule 204–2(g)(3) under the Advisers Act [17 CFR 275.204–2(g)(3)] require funds and advisers that maintain records in electronic formats to establish and maintain procedures to safeguard the records.

[31] Regulation S–P (''Privacy of Consumer Financial Information'') [17 CFR Part 248.30] requires funds and investment advisers to ''adopt policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information.''

[32] Rule 2a–7(c)(7) under the Investment Company Act [17 CFR 270.2a–7(c)(7)] requires boards of money market funds to establish written procedures ''reasonably designed * * * to stabilize the money market fund's net asset value per share.''

[33] Rule 10f–3(b)(10) under the Investment Company Act [17 CFR 270.10f–3(b)(10)] requires boards of funds that purchase securities in an underwriting in which certain persons serve as principal underwriters to adopt certain procedures to govern those purchases. Rule 17a–7(e) under the Investment Company Act [17 CFR 270.17a–7(e)] requires boards of funds that engage in purchase or sale transactions with certain affiliated persons to adopt procedures ''reasonably designed'' to achieve compliance with the conditions on such transactions set forth in the rule.

[34] Under 31 CFR 103.130(c), funds must develop an anti-money laundering program, which includes the establishment and implementation of ''policies, procedures, and internal controls reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder.''

[35] Proposed rules 38a–1(a)(3) and 206(4)–7(b). The NASD and the NYSE recently have proposed annual reviews of the internal controls, and reports to senior management. *See supra* note 23.

[36] Investment Company Act Release No. 25775, *supra* note 22.

[37] Proposed rules 38a–1(a)(4) and 206(4)–7(c). In the case of an adviser, the individual would have to be a supervised person of the adviser. *See supra* note 21, regarding the definition of ''supervised person.'' Although the NASD does not require its member broker-dealers to appoint a chief compliance officer, NASD Conduct Rule 3010(a)(2) does direct them to designate principals responsible for supervision, which ''ensure[s] that there is an identifiable individual who has ultimate responsibility for implementing the member's supervisory system and written procedures for each type of business the member conducts.'' NASD Notice to Members 99–45, at 295–96 (June 1999).

[38] Designation of a person by an adviser as its chief compliance officer would not, in and of itself, impose upon the person a duty to supervise another person. Thus, a chief compliance officer appointed in compliance with the Proposed Rules would not necessarily be subject to a sanction by us for failure

Continued

We understand that many funds and advisers have designated a person to serve as the chief compliance officer.[39] Not all firms have taken this step, which we believe is critical to an effective compliance program. We expect that the primary effect of the rule on funds and larger advisory firms would be to require the compliance personnel to report to one individual with overall responsibility to coordinate the fund's (or firm's) compliance efforts and to establish procedures for annual review of its compliance programs.[40]

In the case of a fund, the fund's board of directors, including a majority of the independent directors, would have to approve the chief compliance officer, who would have additional duties that reflect the important role of fund boards in overseeing fund compliance with the federal securities laws.[41] Proposed rule 38a-1 would require the chief compliance officer to furnish the fund's board of directors annually with a written report on the operation of the fund's policies and procedures, including (i) any material changes to the policies and procedures since the last report, (ii) any recommendations for material changes to the policies and procedures as a result of the annual review, and (iii) any material compliance matters requiring remedial action that occurred since the date of the last report.[42] The rule would thus require board oversight of the fund's compliance program, but would not require directors to become involved in the day-to-day administration of the program. We designed the proposed rule to reflect the way many fund complexes' compliance personnel currently administer fund codes of ethics under rule 17j–1 of the Investment Company Act.

- Rule 17j–1 requires that funds, their investment advisers, and principal underwriters certify annually that they have adopted procedures reasonably necessary to prevent violations of their codes of ethics adopted under the rule.[43] Should we similarly require each chief compliance officer to certify the fund's compliance policies and procedures?
- The USA PATRIOT Act requires funds to establish anti-money laundering programs that designate an anti-money laundering compliance officer,[44] but the implementing rules permit multiple persons to serve in this role.[45] Should our rule permit multiple compliance officers?
- Should we require that the chief compliance officer be a member of senior management of the fund or the adviser?[46]

D. Recordkeeping

We are proposing to require that funds and advisers maintain a copy of their policies and procedures.[47] Funds would have to keep the annual written report by the fund's chief compliance officer.[48] Advisers would have to keep records documenting their annual review.[49] Funds and advisers would have to keep the required documents for five years.[50] These records are designed to provide our examination staff with a basis to determine whether the adviser or fund has complied with the rules.

We request comment on the recordkeeping requirements. Specifically, as required by section 31(a)(2) of the Investment Company Act [15 U.S.C. 80a-30(a)(2)], we request commenters to address whether there are feasible alternatives to the Proposed Rules that would minimize the recordkeeping burdens, the necessity of these records in facilitating the examinations carried out by our staff, the costs of maintaining the required records, and any effects that the proposed recordkeeping requirements would have on the nature of firms' internal compliance policies and procedures.

E. Request for Comment on Further Private Sector Involvement

As we note above, the number of funds and advisers (and the amount of assets they control) has grown significantly.[51] This growth has substantially exceeded the growth in our resources[52] as well as those resources we have been able to allocate to our investment company and investment adviser programs.[53] Although the Commission's resources may increase substantially in the future,[54] other program areas will have competing needs for those resources.[55]

to supervise. A compliance officer that does have supervisory responsibilities will have available the defense discussed above. *See supra* note 13.

[39] Form ADV, the registration form that advisers use to register with us under the Advisers Act, requires each adviser to report the name of its chief compliance officer, but does not require the adviser to *have* a chief compliance officer. Form ADV, Part 1, Schedule A, Item 2(a) [17 CFR 279.1].

[40] The ICI, in its 1994 submission to us, urged that multiple individuals be permitted to perform this role because the knowledge about compliance in specific areas may not be concentrated in any one individual. *See* ICI Proposal, *supra* note 15, at 23. Our proposal, which would require appointment of a single individual, would accommodate a large and diverse compliance organization, but would require the many compliance officers to report ultimately to one individual. The Hong Kong Securities and Futures Commission has taken a similar approach. *See* Fund Manager Code of Conduct at § 1.6.1 (1997) (Hong Kong registered fund managers must have a ''designated compliance officer'').

[41] Proposed rule 38a–1(a)(4)(i). If the fund is a unit investment trust, the fund's principal underwriter or depositor must approve the chief compliance officer. Proposed rule 38a–1(b).

[42] Proposed rule 38a–1(a)(4)(ii).

[43] Rule 17j–1(c)(1)(2).

[44] *See* section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107–56, 115 Stat. 272 (''USA PATRIOT Act''), amending 31 U.S.C 5318(h).

[45] 31 CFR 103.130(c)(3).

[46] In the United Kingdom, the FSA requires that firms allocate to a ''director'' or ''senior manager'' responsibility for oversight of the firm's compliance and reporting. FSA Handbook of Rules and Guidance, Systems and Controls § 3.2.8 (''Areas covered by systems and controls: Compliance'') (United Kingdom).

[47] Proposed rules 38a-1(c)(1) and 204–2(a)(17)(i).

[48] Proposed rule 38a-1(c)(2). A fund's board's deliberations in connection with the approval of the compliance policies and procedures and their annual review of the chief compliance officer's report would be documented in the minute books of the fund board, which must be maintained pursuant to rule 31a-1(b)(4) under the Investment Company Act [17 CFR 270.31a-1(b)(4)].

[49] Proposed rule 204–2(a)(17)(ii).

[50] Funds and advisers would be required to maintain copies of all policies and procedures that are in effect or were in effect at any time during the last five years. Proposed rules 38a-1(c)(1) and 204–2(a)(17)(i). Funds would be required to maintain the annual compliance reports to the board for at least five years after the end of the fiscal year in which the report was provided to the board, the first two years in an easily accessible place. Proposed rule 38a-1(c)(2). Advisers would be required to maintain any records documenting their annual review in an easily accessible place for at least five years after the end of the fiscal year in which the review was conducted, the first two years in an appropriate office of the investment adviser. Proposed rule 204–2(e)(1).

[51] The number of registered investment companies has increased approximately 44% in the past 10 years, from approximately 3,500 in 1991 to approximately 5,030 currently. Investment company assets have grown over 400%, from $1.2 trillion to $6.4 trillion over the same period. Although the number of advisers registered with us decreased during the period (as a result of the enactment of the National Securities Markets Improvement Act, Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in Section 203A of the Advisers Act [15 U.S.C 80b-3a] and other scattered sections of the United States Code)), which prohibited most smaller state-registered advisers from registering with us, the amount of assets under the management of registered advisers has grown from $10.7 trillion in 1997 to over $21 trillion currently, an increase of nearly 100%.

[52] *See* United States General Accounting Office, *SEC Operations: Increased Workload Creates Challenges*, at 11 (Mar. 2002) (''GAO Study'') (during the past decade, ''the increases in SEC's workload substantially outpaced the increases in SEC's staff'').

[53] *See* GAO Study, *supra* note 52, at 13 (''total assets under management by investment companies (IC) and investment advisers (IA) increased by about 264 percent over 10 years, while the number of IC and IA examination staff increased by 166 percent'').

[54] Section 601 of the Sarbanes-Oxley Act, *supra* note 22, authorized us to spend $776 million in fiscal year 2003, which, if appropriated, would be a substantial increase over our appropriation of $487.2 million in fiscal year 2002.

[55] Section 408 of the Sarbanes-Oxley Act, *supra* note 22, for example, requires us, based upon

Moreover, even if we are able to substantially expand our examinationstaff, it is unlikely that future growth in our resources will ever keep pace with future growth of investment advisers and investment companies. We therefore are exploring ways in which we may make the best use of limited government resources to protect the interests of the millions of investors who invest in funds, participate in pension funds managed by investment advisers, or use the services of a personal financial planner or money manager.

One promising way of leveraging government resources would be for the Commission to rely more heavily on the private sector, *i.e.*, on the advisers and funds that are the indirect beneficiaries of our compliance program and the federal tax dollars that today support our regulatory efforts. The rules we are proposing today are one step in this direction. Others may also be appropriate to consider, including those we describe briefly below. We invite interested persons to submit comments as to the advisability of pursuing any or all of them, as well as other approaches for involving the private sector in enhancing compliance with the federal securities laws. We request that commenters address the Commission's authority to effect through rulemaking each of the approaches.

1. Compliance Reviews

One approach might be to require each fund and adviser to undergo periodic compliance reviews by a third party that would produce a report of its findings and recommendations. Our examination staff could use these reports to identify quickly areas that required attention, permitting us to allocate examination resources better and, as a result, to increase the frequency with which our staff could examine funds and advisers. Funds and advisers with reports indicating that they have effective compliance programs could be examined less frequently, which would reduce the burdens on them of undergoing more frequent examination by our staff.

There are many organizations that provide compliance reviews, including ''mock audits'' for investment advisers and funds, and have personnel that have experience in designing, implementing, and assessing the effectiveness of compliance programs.[56] As a condition to the settlement of an enforcement action, we frequently require an adviser or fund to engage a compliance consultant.[57] The USA PATRIOT Act requires financial institutions (including mutual funds), as part of their anti-money laundering programs, to have an independent audit function to test their programs.[58]

We request comment on the advantages and disadvantages of requiring advisers and funds to undergo compliance reviews. If we adopt such a requirement, should we exclude certain types of funds or advisers? Would the cost of these reviews be prohibitive for smaller advisers? Would some fund groups or advisers hire the least expensive compliance consultant regardless of the quality of the consultant's work? If so, how could we ensure that a high quality compliance review is conducted? If we adopt such a requirement, should we require the third parties who conduct such reviews to satisfy certain minimum standards for education and experience? What criteria should be included in the rule to determine whether a third party compliance expert is independent? How frequently should we require such reviews to be conducted? What is the proper scope for third party reviews? Should we require the third party consultant to file its report with us? If so, what should the scope of the report be?

2. Expanded Audit Requirement

Another approach might be to expand the role of independent public accountants that audit fund financial statements to include an examination of fund compliance controls. Such an approach would involve the performance by fund auditors of certain of the compliance review procedures currently performed by our staff in a compliance examination.[59]

Our rules today require fund auditors to submit internal control reports to fund boards.[60] In these reports, the auditor must identify any material weaknesses in the accounting system, the system of internal accounting controls, and the procedures for safeguarding securities of which they become aware while planning and performing the audit on the fund's financial statements.[61] The auditor's responsibilities could be augmented to require the identification of material weaknesses in the internal controls or a report on other aspects of the internal controls that are not required to be reviewed in planning and performing an audit of the financial statements. Expanding the auditor's responsibilities could, to some extent, serve as a substitute for staff examination or reduce the frequency of staff examination of funds with strong internal compliance programs, which would free Commission resources to focus on other areas of fund operations and permit us to examine funds with weaker internal compliance programs more often.

We request comment on this approach. Should we expand the responsibilities of the fund auditor? If so, what specific areas would it be appropriate for auditors to review? What type of assurance report should be provided?[62]

3. Self-Regulatory Organization

The formation of one or more self-regulatory organizations (SROs) for funds and/or advisers also would be a means to involve the private sector in support of our regulatory program. An SRO would function in a manner analogous to the national securities exchanges and registered securities associations under the Securities Exchange Act of 1934 by (i) establishing business practice rules and ethical standards, (ii) conducting routine examinations, (iii) requiring minimum education or experience standards, and (iv) bringing its own actions to

consideration of certain enumerated criteria, to review the disclosures, including the financial statements made by issuers reporting under the Securities Exchange Act of 1934, at least once every three years.

[56] *See, e.g.*, Jeremy Kahn, *Practice Audits Pay Off*, Fortune, June 24, 2002, at 40 (discussing mock audits of investment advisers); Nancy Opiela, ''*They're Here* * * *,'', 15 Journal of Financial Planning 52 (2002) (discussing use of mock auditors by financial planners preparing for audits by our staff).

[57] *See, e.g.*, Gintel Asset Management, Investment Advisers Act Release No. 2079 (Nov. 8, 2002); Performance Analytics, Investment Advisers Act Release No. 2036 (June 17, 2002); ND Money Management, Investment Advisers Act Release No. 2027 (Apr. 12, 2002); Stan D. Kiefer & Associates, Investment Advisers Act Release No. 2023 (Mar. 22, 2002).

[58] Section 352 of the USA PATRIOT Act, *supra* note 44. *See also* 31 CFR 103.130(c)(2) (requiring mutual funds, as a part of their written anti-money laundering programs, to provide for ''independent testing for compliance to be conducted by the mutual fund's personnel or by a qualified outside party'').

[59] We first raised this idea in a concept release we issued in 1983. Concept of Utilizing Private Entities in Investment Company Examinations and Imposing Examination Fees, Investment Company Act Release No. 13044 (Feb. 23, 1983) [48 FR 8485 (Mar. 1, 1983)].

[60] Rule 30a-1 [17 CFR 270.30a-1]; Item 77B of Form N-SAR [17 CFR 249.330; 17 CFR 274.101].

[61] Item 77B, *supra,* note 60.

[62] *See, e.g.,* American Institute of Certified Public Accountants (AICPA), Statement on Auditing Standards No. 70 Service Auditor's Report; AICPA, Statement on Standards for Attestation Engagements, AT §§ 500.54–61 (''Compliance Attestation Reporting'')).

discipline members for violating its rules and the federal securities laws.

SROs play an increasingly important role in the regulation of financial services in the United States. SROs participate with us in overseeing the public securities markets, including broker-dealers.[63] They also oversee the municipal bond market,[64] and the system of clearance and settlement of securities trades.[65] An SRO also plays an important part in the oversight of the futures markets, including futures commissions merchants, commodity pool operators, and commodity trading advisers.[66] In the Sarbanes-Oxley Act, Congress affirmed the role of private sector regulatory organizations by establishing the Public Company Accounting Oversight Board, which is charged with overseeing the audit of public companies.[67]

United States Supreme Court Justice Stewart stated that the purpose of the provisions of the Exchange Act creating SROs was ''to delegate governmental power to working institutions which would undertake, at their own initiative, to enforce compliance with ethical as well as legal standards in a complex and changing industry.''[68] Our experience with SROs suggests that this delegation of authority can have many advantages: SROs can marshal resources not available to the Commission and can have greater access to industry expertise. They can act more nimbly than a government agency, which is subject to significant personnel, contracting, and procedural requirements. An SRO can require its members to adhere to higher standards of ethical behavior than we can require under the securities laws. Moreover, industry leaders who participate in the regulatory process acquire a greater sense of their stake in the process.[69]

Proposals to create SROs for funds or investment advisers have been considered by Congress, the Commission, and members of the investment management industry in past years. In 1983, we requested comment on the concept of designating an ''inspection-only'' SRO for funds.[70] And in 1989, we submitted legislation to Congress requesting authority to designate one or more SROs for investment advisers.[71] Both initiatives reflected the concern of the Commission that our resources were inadequate to address the growth of investment advisers and funds.[72] Any SRO would be subject to the pervasive oversight of the Commission. We would examine its activities, require it to keep records, and approve its rules only if we conclude that they further the goals of the federal securities laws. Disciplinary actions could be appealed to the Commission. We would expect to be vigilant in preventing SRO rules that impose a burden on competition not necessary to further a regulatory purpose. Our staff would continue to examine the activities of funds and advisers, both to ensure adequate examination coverage and to provide oversight of the SRO examination program.

We request comment on whether one or more SROs should be established for funds and/or investment advisers. Should the SROs be limited in their authority? For example, should they be limited to conducting examinations? How should the activities of an SRO be financed? [73]

4. Fidelity Bonding Requirement for Advisers

Another means to privatize some of the compliance function would be to require investment advisers to obtain fidelity bonds from insurance companies. Fidelity bonds provide a source of compensation for advisory clients who are victims of fraud or embezzlement by advisory personnel. They result in additional oversight of advisers by insurance companies, which are unwilling to issue bonds to advisers that place their assets at risk by having poor controls or that hire employees with criminal or poor disciplinary records. The cost of that oversight is reflected in the premiums charged for the bond. High-risk advisers would be denied bonds or would be charged

[63] National Securities Exchanges register with us as SROs pursuant to Section 6 of the Exchange Act [15 U.S.C. 78f]. Currently, there are nine active securities exchanges. Section 15A of the Exchange Act [15 U.S.C. 78*o*-3] authorizes us to register one or more national securities associations to regulate the activities of member broker-dealers. NASD is the only national securities association currently registered under this section. Section 15A was added in 1938 to regulate the activities of brokers who traded securities of issuers that were not listed on the exchanges. Maloney Act, Pub. L. No. 75–719, 52 Stat. 1070 (1938).

[64] The Securities Amendments Act of 1975 [Pub. L. No. 94–29, 87 Stat. 97 (1975)] added section 15B to the Exchange Act [15 U.S.C. 78*o*-4], which directed the Commission to establish the Municipal Securities Rulemaking Board (''MSRB''). Unlike the other SROs, the MSRB was created by Congress solely to write rules governing the municipal securities market; it is not a membership organization and does not have authority to discipline its members.

[65] Clearing agencies register with us pursuant to Section 17A(b) of the Exchange Act [15 U.S.C. 78q-1(b)]. Currently, there are 13 clearing agencies registered with us.

[66] *See* Commodity Futures Trading Commission (''CFTC'') Rule 170.15 [17 CFR 170.15] (membership in a registered futures association mandatory) and National Futures Association (''NFA'') Bylaw 1101 (membership in the NFA mandatory for any registered party that transacts futures business with the public). The NFA performs various functions for the CFTC, including processing of applications for registration and conducting proceedings to deny, condition, suspend, restrict or revoke the registration of persons registered with the CFTC.

[67] Section 101 of the Sarbanes-Oxley Act, *supra* note 22.

[68] *Silver* v. *New York Stock Exchange,* 373 U.S. 341, 371 (1963) (Stewart, J., dissenting).

[69] *See* Report of Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 88–95, pt. 4, at 722 (1963) (''Special Study'').

[70] Investment Company Act Release No. 13044, *supra* note 59.

[71] The legislation was introduced as S. 1410 and H.R. 3054, 101st Cong. (1989). Consideration by the Commission of an SRO for investment advisers appears to have first begun in 1963 when our Special Study of the Securities Markets recommended that membership in an SRO should be required of all registered investment advisers. Special Study, *supra* note 69, pt. 1, at 158–59. In 1976, the Commission asked Congress for the authority to conduct a formal study of the feasibility of establishing one or more SROs for investment advisers. S. Rep. No. 94–910, at 10 (1976).

In 1986, the NASD conducted a pilot program to determine the feasibility of examining the investment advisory activities of its members who were also registered as investment advisers. *See* Staff of the Securities and Exchange Commission, *Report on Financial Planners to House Comm. on Energy and Commerce, Subcomm. on Telecommunications and Finance,* at 118–23 (Feb. 1988). In 1993, the House of Representatives passed a bill that, among other things, would have amended the Advisers Act to authorize the creation of an ''inspection-only'' SRO for investment advisers. H.R. 578, 103rd Cong. (1993).

Industry organizations and their members and commenters have, from time-to-time, also called for the creation of an SRO for investment advisers. *See* Note, *Financial Planning: Is It Time for a Self-Regulatory Organization?,* 53 Brook. L. Rev. 143 (1987); Charles Lefkowitz, *The World of Financial Planning: Why an SRO Makes Sense,* 87 Best's Review, Dec. 1986, at 32. In 1985, the International Association of Financial Planners proposed the creation of an SRO for financial planners based on the NASD model. *See* Letter from Hubert L. Harris, Executive Director of the International Association for Financial Planning, to Kathryn B. McGrath, Director of the Commission's Division of Investment Management (June 19, 1985) (transmitting summary of proposal for financial planner SRO adopted by the Association's board of directors) (available in File No. S7–03–03). Not all industry participants have supported the creation of an SRO. *See* David Tittsworth, Executive Director, Investment Counsel Association of America, Statement for our Roundtable on Investment Adviser Regulatory Issues (May 23, 2000) (''We continue to oppose the creation of a self-regulatory organization for the advisory profession * * * [which] is unwarranted and would impose a new layer of cost and bureaucracy on the profession.'') (available at: *http://www.sec.gov/rules/other/f4–433/tittswo1.htm).* Others object to being regulated by a particular SRO. *See* Aaron Luccetti, *NASD's Push to Extend Its Reach Spurs Anger of Investment Advisers,* Wall St. J., Nov. 12, 1998, at C1.

[72] We issued the 1983 concept release out of a concern, in part, that the growth in money market funds (which were then a novel type of fund) would outstrip our examination resources. In 1983, money market funds had $179 million of assets under management. Today, they have nearly $2.3 trillion of assets. Investment Company Institute, *2002 Mutual Fund Fact Book* 86.

[73] Other financial SROs, for example, are financed by fees imposed on members and users of their services rather than by public funds.

higher amounts to compensate the insurance company for assuming greater risk.

Investment advisers are among the only financial service providers handling client assets that are not required to obtain fidelity bonds.[74] The Advisers Act does not require advisory firms to have a minimum amount of capital invested, and many have few assets.[75] When we discover a serious fraud by an adviser, often the assets of the adviser are insufficient to compensate clients. The losses are borne by clients who may lose their life's savings, or be unable to afford a college education for their children or a comfortable retirement.

Should advisers be required to obtain a fidelity bond from a reputable insurance company? If so, should some advisers be excluded?[76] Alternatively, should advisers be required to maintain a certain amount of capital that could be the source of compensation for clients?[77] What amount of capital would be adequate?[78]

III. General Request for Comment

The Commission requests comment on the Proposed Rules, suggestions for additions to the Proposed Rules, and comment on other matters that might have an effect on the proposals contained in this release. We note that the comments that are of greatest assistance are those that are accompanied by supporting data and analysis of the issues addressed in those comments.

IV. Cost-Benefit Analysis

We are sensitive to the costs and benefits that result from our rules. The Proposed Rules would require each fund and adviser to adopt and implement policies and procedures reasonably designed to prevent violations of the securities laws, to review these annually, and to designate an individual as chief compliance officer. We have identified certain costs and benefits, which are discussed below, that may result from the proposals. We request comment on the costs and benefits of the Proposed Rules. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or any additional costs and benefits.

A. Benefits

We anticipate that fund investors, advisory clients, funds, and advisers will benefit from the Proposed Rules. The Proposed Rules would benefit fund investors and advisory clients (collectively, ''investors'') by requiring funds and advisers to design and implement a comprehensive internal compliance program. Although many funds and advisers already have such programs in place, the Proposed Rules would make this standard practice for all firms. Investors would be less likely to be harmed by violations of the securities laws because experience has shown that strong internal compliance programs lower the likelihood of securities laws violations occurring and enhance the likelihood that any violations that do occur will be detected and corrected. In addition, because the Proposed Rules are designed to complement the Commission's examination program, the Commission's ability to protect investors would be enhanced. The existence of a structured compliance program, together with the designation of a chief compliance officer to serve as a point of contact, would facilitate the examination staff's efforts to conduct each examination in an organized and efficient manner and thus to allocate resources to maximize investor protection.

Although the Proposed Rules would impose additional compliance costs on many funds and advisers, they would benefit funds and advisers by diminishing the likelihood of securities violations, Commission enforcement actions, and private litigation. For a fund or adviser, the potential costs associated with a securities law violation may consist of much more than merely the fines or other penalties levied by the Commission or civil liability. Advisers may be denied eligibility to advise funds.[79] In addition, advisers could be precluded from serving in other capacities.[80] The reputation of a fund or adviser may be significantly tarnished, resulting in redemptions (in the case of an open-end fund) or lost clients.

B. Costs

The Proposed Rules would result in some additional costs for funds and advisers, which, in the case of funds, we expect would be passed on to investors. However, since all funds and most advisers currently have some written compliance policies and procedures in place, the costs in many instances already are reflected in the fees investors currently pay. Funds and larger advisory firms typically have adopted and implemented comprehensive, written policies and

[74] Fidelity bonds are required to be obtained by: broker-dealers (NASD Conduct Rule 3020; NYSE Rule 319; American Stock Exchange Rule 330); transfer agents (NYSE Listed Company Manual § 906.01); investment companies (17 CFR 270.17g–1); national banks (12 CFR 7.2013); and federal savings associations (12 CFR 563.190). Section 412 of the Employee Retirement Income Security Act (ERISA) [29 U.S.C. 1112] requires investment advisers to obtain a fidelity bond with respect to any employee benefit plan assets the adviser manages, and many state laws require state-registered advisers to obtain fidelity bonds. *See, e.g.*, Ala. Admin. Code r. 830-x-3-.06(4) (2002) (requiring $50,000 bond for advisers that have custody of or discretionary authority over customer assets); Mass. Regs. Code tit. 950, § 12.205(5)(b) (2002) (requiring $10,000 bond for advisers that have custody of or discretionary authority over client assets or receive prepayments); Minn. R. 2875.1930, Subpart 1 (2002) (requiring $25,000 bond for advisers that have custody of or discretionary authority over client assets); N.J. Admin. Code tit. 13, § 47.A–2.2 (2002) (requiring $25,000 bond or $25,000 minimum capital for advisers that have custody of client assets); 21 Va. Admin. Code 5–80–180(B) (requiring $25,000 bond or $25,000 minimum capital for advisers). Similarly, independent financial advisers registered with the FSA in the United Kingdom must maintain professional indemnity insurance. Prudential Rules for Independent Financial Advisers § 13.13R (Nov. 2001).

[75] In 1992, both the Senate and House of Representatives passed bills that would have given us authority to require advisers to obtain fidelity bonds. S. 2266, § 5, 102nd Cong. (1992), and H.R. 5726, § 107, 102nd Cong. (1992). Because differences in the two bills were never reconciled, neither became law.

[76] The 1992 legislation would have given us authority to require bonding of advisers that have custody of client assets or that have discretionary authority over client assets. Section 412 of ERISA requires plan fiduciaries to obtain a bond with respect to plan assets ''handled'' by the plan fiduciary. Department of Labor rules clarify that handling plan assets includes having discretionary authority over them. 29 CFR 2580.412–6.

[77] In 1973, a Commission advisory committee recommended that Congress authorize us to adopt minimum financial responsibility requirements for investment advisers, including minimum capital requirements. Advisory Committee on Investment Management Services for Individual Investors, *Small Account Investment Management Services: Recommendations for Clearer Guidelines and Policies* 64–66 (Jan. 1973). Three years later, in 1976, the Senate Committee on Banking, Housing, and Urban Affairs reported a bill that, among other things, authorized the Commission to adopt rules requiring advisers (i) with discretionary authority over client assets, (ii) with access to client funds or securities, or (iii) that advise registered investment companies, to meet financial responsibility standards. S. Rep. No. 94–910, at 14–15 (1976) (reporting favorably S. 2849). S. 2849 was never enacted.

[78] Section 412 of ERISA requires that the bond required under that section be no less than 10% of the amount of funds handled.

[79] Section 9(a) of the Investment Company Act [15 U.S.C. 80a–9(a)] prohibits a person from serving as an adviser to a fund if, within the past 10 years, the person has been convicted of certain crimes or is subject to an order, judgment, or decree of a court prohibiting the person from serving in certain capacities with a fund, or prohibiting the person from engaging in certain conduct or practice.

[80] *See, e.g.*, 29 U.S.C. 1111(a) (prohibiting a person from acting in various capacities for an employee benefit plan, if within the past 13 years, the person has been convicted of, or has been imprisoned as a result of, any crime described in section 9(a)(1) of the Investment Company Act [15 U.S.C. 80a–9(a)(1)].

procedures. Many of these advisers also have well-staffed compliance departments. Many conduct periodic reviews of their compliance programs and some hire independent compliance experts to review the adequacy of their compliance programs and the effectiveness of their implementation. We would expect that funds and advisers with substantial commitments to compliance would incur only minimal costs in connection with the adoption of the Proposed Rules as they reviewed their internal compliance programs for adequacy.

It is our experience that small funds and advisers are less likely than their larger counterparts to have comprehensive, written internal compliance programs in place. The Proposed Rules would impose larger relative costs on these firms. Based on our examination experience, we estimate that as many as one half of SEC-registered investment advisers do not have comprehensive, written internal compliance programs in place. These firms would incur costs in order to develop a compliance program or to convert their current compliance activities into a systematic program. However, we expect a number of factors will enable these firms to control and minimize these costs. Because these small firms typically engage in a limited number and range of transactions and have one or two employees, their internal compliance programs would be markedly less complex than those of their large firm counterparts. In addition, we anticipate that these firms will turn to a variety of industry representatives, commentators, and organizations that have developed outlines and model programs that these firms can tailor to fit their own situations. If these firms need individualized outside assistance, we expect that the number of independent compliance experts will grow to fill this demand at competitive prices, as has been the case in comparable situations.

The requirement that each firm designate a chief compliance officer likely would impose only a minimal cost. Many firms already have large compliance staffs headed by an individual who effectively serves as a chief compliance officer. For other firms, costs associated with designating a chief compliance officer also would be minimized by the fact that the Proposed Rules would not require firms to hire an individual exclusively charged with serving in this capacity.

We anticipate that costs associated with the annual review requirement also would be limited. Many large firms with comprehensive compliance programs periodically review portions of their compliance programs. These firms would incur a cost associated with transforming their periodic reviews into a more systematic annual review, but this cost is difficult to quantify. Most of the firms without any review mechanism in place are small. For these firms, the annual review requirement likely would be less extensive and, therefore, less costly than for their larger counterparts.

C. Request for Comment

We request comment on the potential costs and benefits identified in the proposal and any other costs or benefits that may result from the Proposed Rules. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[81] the Commission also requests information regarding the impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide data to support their views.

V. Consideration of Promotion of Efficiency, Competition and Capital Formation

Section 2(c) of the Investment Company Act [15 U.S.C. 80a–2(c)] and section 202(c) of the Advisers Act [15 U.S.C. 80b–2(c)] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[82]

As discussed above, the Proposed Rules would require funds and investment advisers to adopt and implement written policies and procedures designed to prevent violations of the federal securities laws, and review those policies and procedures at least annually. Although we recognize that a compliance program may divert resources from funds' and advisers' primary businesses, we expect that the Proposed Rules may indirectly increase efficiency in a number of ways. These compliance programs would increase efficiency by deterring securities law violations, or by facilitating the fund's or adviser's early intervention to decrease the severity of any violations that do occur. In addition, funds and advisers would be required to carry out their internal compliance functions in an organized and systematic manner, which may be more efficient than their current approach to these functions. The existence of an industry-wide compliance program requirement may enhance efficiency further by encouraging third parties to create new informational resources and guidance to which industry participants can refer in establishing and improving their compliance programs.

Since the Proposed Rules would apply equally to all funds and advisers, we do not anticipate that any competitive disadvantages would be created. To the contrary, the Proposed Rules may encourage competition on a more level basis than exists in the current environment, in which compliance-oriented industry participants incur greater costs to maintain compliance programs than other firms.

We anticipate the Proposed Rules would indirectly foster capital formation. It has been our experience that funds and advisers with effective compliance programs are less likely to violate the securities laws and harm to investors is less likely to result. To the extent such an environment enhances investor confidence in funds and client confidence in investment advisers, investors and clients are more likely to make assets available through these intermediaries for investment in the capital markets.

We request comment on whether the Proposed Rules, if adopted, would impose a burden on competition. We also request comment on whether the Proposed Rules, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views, if possible.

VI. Paperwork Reduction Act

The Proposed Rules would impose ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[83] If adopted, these collections of information would be mandatory. Two of the collections of information are new. The Commission has submitted these new collections to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles of these new collections are ''Rule 38a–1'' and ''Rule 206(4)–7.'' The OMB has not yet assigned these collections control numbers. The other collection of information takes the form of

[81] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[82] Although proposed rule 206(4)–7 is not based on a statutorily-mandated public interest determination, in the interest of comprehensiveness, we include it in this analysis.

[83] 44 U.S.C. 3501 to 3520.

amendments to a currently approved collection titled ''Rule 204–2,'' under OMB control number 3235–0278. The Commission also has submitted the amendments to this collection to the OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The collection of information under rule 38a–1 is necessary to assure that investment companies maintain comprehensive internal programs that promote the companies' compliance with the federal securities laws. The respondents are investment companies registered with us and business development companies. Our staff, conducting the Commission's examination and oversight program, would use the information collected to assess funds' compliance programs. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.[84] Rule 38a–1 requires that certain records be retained for at least five years.[85]

The collection of information under rule 206(4)–7 is necessary to assure that investment advisers maintain comprehensive internal programs that promote the advisers' compliance with the Advisers Act. The respondents are investment advisers registered with us. Our staff, conducting the Commission's examination and oversight program, would use the information collected to assess investment advisers' compliance programs. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.[86]

The collection of information under rule 204–2 is necessary for the Commission staff to use in its examination and oversight program. The respondents are investment advisers registered with us. Responses provided to the Commission in the context of its examination and oversight program are generally kept confidential.[87] The records that an adviser must keep in accordance with the Proposed Rules must be retained for at least five years.[88]

[84] See section 31(c) of the Investment Company Act [15 U.S.C. 80a–30(c)].

[85] *See* Proposed rule 38a–1(c).

[86] *See* section 210(b) of the Advisers Act [15 U.S.C. 80b–10(b)].

[87] *Id.*

[88] *See* proposed rule 204–2(a)(17)(i) and rule 204–2(e)(1) [17 CFR 275.204–2(e)(1)].

A. Rule 38a–1

There are currently approximately 5,030 registered investment companies and 53 business development companies.[89] Thus, approximately 5,083 funds would be subject to proposed rule 38a–1. We estimate that the average annual hour burden for a fund to document the policies and procedures that make up its compliance program would be 60 hours. While each fund would be required to maintain written policies and procedures under rule 38a–1, this average estimate takes into account that most funds are located within a fund complex. Based on our staff's experience in connection with our examination and oversight program, we expect that each fund in a complex would be able to draw extensively from the fund complex's ''master'' compliance program to assemble appropriate compliance policies and procedures. It also has been our experience that many fund complexes already have written policies and procedures documenting their compliance programs. Further, a fund needing to develop policies and procedures on one or more topics in order to achieve a comprehensive compliance program can draw on a number of outlines and model programs available from a variety of industry representatives, commentators, and organizations.

We also estimate that each fund would spend five hours annually, on average, documenting the conclusions of its annual compliance review for its board of directors. Finally, we estimate that each fund would spend 0.5 hours annually, on average, maintaining the records required by proposed rule 38a-1. In total, the collections of information under rule 38a–1 would entail 332,936.5 burden hours.[90]

B. Rule 206(4)–7

There are currently approximately 7,790 investment advisers registered with us.[91] We estimate that the average annual hour burden for each adviser to document the policies and procedures that make up its compliance program would be 80 hours, for a total burden of 623,200 hours.[92] While each adviser registered with us would be subject to the requirement to maintain written policies and procedures under proposed rule 206(4)–7, this average estimate takes into account that many advisers would be the primary drafters of compliance policies and procedures for funds under proposed rule 38a–1. We expect that these advisers would be able to draw extensively from their fund compliance programs to supplement, as necessary, compliance policies and procedures for the advisory firm.

It also has been our staff's experience in connection with our examination and oversight program that approximately half of the investment advisers registered with us already have drafted procedures addressing many aspects of their compliance programs, and many investment advisers in this group have drafted comprehensive procedures. Further, while it has been our experience that a significant number of smaller registered investment advisers—who typically employ one or a few persons and have complete oversight of their business operations—have not adopted written policies and procedures, these advisers can draw on a number of outlines and model programs available from a variety of industry representatives, commentators, and organizations. Based on our experience, these smaller advisers are less likely to participate in arranging or effectuating securities transactions that they recommend to their clients, thereby greatly simplifying the scope of the policies and procedures they would be required to document under the proposed rule.

C. Rule 204–2

The currently-approved annual aggregate information collection burden under rule 204–2 is 1,625,638.5 hours. This approved annual aggregate burden was based on estimates that 7,687 advisers were subject to the rule, and each of these advisers spends an average of 211.48 hours preparing and preserving records in accordance with the rule. Based upon the most recently available data, there are 7,790 registered investment advisers. The increase in the number of registered investment advisers increases the total burden hours of current rule 204–2 from 1,625,638.5 to 1,647,429.2,[93] an increase of 21,790.7 hours.[94]

[89] These numbers are based on Commission filings and are current as of January 2003.

[90] (5,083 funds (5,030 registered investment companies + 53 business development companies)) × (60 hours for documenting compliance policies and procedures + 5 hours for documenting conclusions of annual compliance review + 0.5 hours for maintaining records) = 332,936.5 burden hours.

[91] This is the number of investment advisers registered with us on our Investment Adviser Registration Depository System as of January 14, 2003.

[92] 7,790 registered investment advisers × 80 annual average burden hours = 623,200 hours.

[93] 7,790 registered investment advisers × 211.48 hours = 1,647,429,2 hours.

[94] 1,647,429.2 hours—1,625,638.5 hours = 21,790.7 hours.

The proposed amendments to rule 204–2 would require a registered investment adviser to maintain copies of the written policies and procedures drafted under proposed rule 206(4)–7. In addition, the proposed amendments would require a registered investment adviser to retain copies of any records documenting the adviser's annual review of its policies and procedures under proposed rule 206(4)–7. The collection of information under rule 204–2 is necessary for the Commission staff to carry out its examination and oversight program. The adviser would be required to maintain these records for five years.[95]

We estimate that these proposed amendments would increase each registered investment adviser's average annual collection burden under rule 204–2 by 0.5 hours to 211.98 hours,[96] and would increase the rule's annual aggregate burden by 3,895 hours.[97] If the proposed amendments to rule 204–2 are adopted, the rule's aggregate annual burden would be 1,651,324.2 hours.[98]

D. Request for Comment

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, and also should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609 with reference to File No. S7–03–03.

OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives the comment within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–03–03, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549.

VII. Summary of Initial Regulatory Flexibility Analysis

We have prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding the proposed rule 38a–1 under the Investment Company Act, and proposed rule 206(4)–7 and proposed amendments to rule 204–2 under the Advisers Act. The following summarizes the IRFA.

The IRFA summarizes the background of the proposals. The IRFA also discusses the reasons for the proposals and the objectives of, and legal basis for, the proposals. Those items are discussed above.

The IRFA discusses the effect of the Proposed Rules on small entities. For purposes of the Regulatory Flexibility Act, a fund is a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[99] An investment adviser is a small entity if it (i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last day of its most recent fiscal year, and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages $25 million or more in assets, or any person (other than a natural person) that had total assets of $5 million or more on the last day of the most recent fiscal year.[100] The staff estimates, based on Commission filings, that there are 200 small open- and closed-end investment companies and 29 small business development companies.[101] The staff further estimates that there are approximately 7,790 registered investment advisers, of which approximately 172 are small entities.[102]

The IRFA explains that the Proposed Rules would impose no new reporting requirements, but would impose compliance requirements on funds and advisers, including small funds and advisers. A fund would be required to adopt and implement written policies and procedures reasonably designed to prevent violation of the federal securities laws, obtain approval of the policies and procedures from its board of directors, review the policies and procedures at least annually, and provide a written report on the review to its board of directors. A fund also would be required to designate a chief compliance officer, and to maintain copies of the policies and procedures and reports to the board for at least five years. An adviser would be required to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act and review the policies and procedures at least annually. An adviser would be required to designate a chief compliance officer, and to maintain copies of the policies and procedures and any records documenting the annual review for at least five years.

The IRFA states that we have not identified any federal rules that conflict with the Proposed Rules. The IRFA explains that the written policies and procedures that would be required by the Proposed Rules would include some policies and procedures required by other rules under the federal securities laws, but the Proposed Rules would not require them to be duplicated.[103] The IRFA further explains that some of the records a fund would be required to maintain under the Proposed Rules also may be required records under the general recordkeeping provisions of rule 31a-1 of the Investment Company Act, but that the overlap would be limited

[95] Proposed rule 204–2(a)(17)(i) would require advisers to maintain a copy of any policies and procedures in effect during the past five years. Pursuant to proposed rule 204–2(e)(1), the records documenting the adviser's annual review of those policies and procedures would have to be maintained and preserved in an easily accessible place for five years, the first two in an office of the investment adviser.

[96] 211.48 hours + 0.5 hours = 211.98 hours.

[97] 7,790 registered investment advisers × 0.5 hours = 3,895 hours.

[98] 1,625,638.5 (currently-approved burden) + 21,790.7 (adjustment attributable to increase in number of investment advisers registered with us) + 3,895 (additional burden hours associated with the proposed amendments to rule 204–2) = 1,651,324.2 hours.

[99] 17 CFR 270.0–10.

[100] 17 CFR 275.0–7.

[101] These numbers, which are current as of June 2002, are derived from analyzing information from databases such as Morningstar and Lipper. Some or all of these entities may contain multiple series or portfolios. If a registered investment company is a small entity, the portfolios or series it contains are also small entities.

[102] The number of small investment advisers is derived from information submitted by investment advisers registered with us on Form ADV, or amendments thereto, through January 14, 2003.

[103] *See supra* notes 26, and 29 through 34.

and the Commission would not require the fund to maintain duplicate copies.

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant economic impact on small entities. The IRFA explains that we currently believe that different compliance requirements for small entities could not be established, because the compliance requirements are integral to achieving the objectives of the Proposed Rules. The IRFA also states that we currently believe it would not be necessary to establish different recordkeeping requirements, because the recordkeeping requirements of the Proposed Rules impose an inconsequential burden on small entities. The IRFA also describes our current view that these compliance and recordkeeping provisions could not be consolidated, and that there would be no reason to simplify or clarify them because they are not technical or complex.

As the IRFA explains, the Proposed Rules would rely on performance standards rather than design standards. Each small entity would be afforded the flexibility to implement policies and procedures, and to determine qualifications for its chief compliance officer that are appropriate in light of its business operations.

The IRFA also explains our present view that the objectives of the Proposed Rules could not be achieved if small entities were exempted from coverage of any part of the Proposed Rules, because it has been our experience that small funds and advisers are less likely to have comprehensive, written compliance programs and are more likely to have the kinds of compliance deficiencies that could be remedied by such programs.

We encourage comment with respect to any aspect of the IRFA. We specifically request comment on the number of small entities that would be affected by the Proposed Rules, and the likely impact of the Proposed Rules on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in connection with the adoption of the Proposed Rules, and will be placed in the same public file as comments on the Proposed Rules themselves. A copy of the IRFA may be obtained by contacting Hester Peirce, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

VIII. Statutory Authority

The Commission is proposing new rule 38a-1 under the Investment Company Act pursuant to the authority set forth in sections 31(a) and 38(a) of the Act [15 U.S.C. 80–30(a) and 80a–37(a)].[104] The Commission is proposing new rule 206(4)–7 pursuant to the authority set forth in sections 206 and 211(a) under the Advisers Act [15 U.S.C. 80b–6 and 80b–11(a)].[105] The Commission is proposing amendments to rule 204–2 pursuant to the authority set forth in sections 204 and 211 of the Advisers Act [15 U.S.C. 80b–4 and 80b–11].

List of Subjects

17 CFR 270

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR 275

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. Section 270.38a–1 is added to read as follows:

§ 270.38a–1 Compliance procedures and practices of registered investment companies.

(a) Each registered investment company and business development company (''fund'') must:

(1) *Policies and procedures.* Adopt and implement written policies and procedures reasonably designed to prevent violation of the Federal Securities Laws by the fund, or by its investment adviser, principal underwriter or administrator in connection with their provision of services to the fund;

(2) *Board approval.* Obtain the approval of the policies and procedures of the fund by the board of directors of the fund, including a majority of directors who are not interested persons of the fund;

(3) *Annual review.* Review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation;

(4) *Chief compliance officer.* Designate an individual responsible for administering the policies and procedures adopted under paragraph (a)(1) of this section who must:

(i) Be approved by the board of directors of the fund, including a majority of directors who are not interested persons of the fund; and

(ii) No less frequently than annually, provide a written report to the board on:

(A) Existing policies and procedures, any material changes made to the policies and procedures since the date of the last report, and any material changes to the policies and procedures recommended as a result of the annual review conducted pursuant to paragraph (a)(3) of this section; and

(B) Any material compliance matters requiring remedial action that occurred since the date of the last report.

(b) *Unit investment trusts.* If the fund is a unit investment trust, the fund's principal underwriter or depositor must approve the fund's policies and procedures and chief compliance officer, and receive all annual reports.

(c) *Recordkeeping.* The fund must maintain:

(1) A copy of the fund's policies and procedures that are in effect, or at any time within the past five years were in effect, in an easily accessible place; and

(2) Written reports provided to the board of directors pursuant to paragraph

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[104] Section 38(a) authorizes the Commission to ''make * * * such rules and regulations * * * as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission elsewhere in [the Investment Company Act].'' We are proposing rule 38a–1 as necessary and appropriate to the exercise of the authority specifically conferred on us elsewhere in the Act, including section 31(b) of the Investment Company Act [15 U.S.C. 80a–30(b)] (authority to examine funds) and section 42 of the Investment Company Act [15 U.S.C. 80a–41] (authority to enforce the provisions of the Investment Company Act). Further, requiring the maintenance of internal compliance policies and procedures and an annual compliance report would fall under the authority granted to us under section 31(a), which authorizes us to require funds to maintain and preserve records, including memoranda, books, and other documents.

[105] Section 206(4) permits the Commission to define conduct as fraudulent under the Advisers Act, and to adopt rules reasonably designed to prevent fraud. We are proposing rule 206(4)–7 as a means reasonably necessary to prevent fraud by investment advisers. Further, section 211(a) of the Advisers Act authorizes the Commission to ''make * * * such rules and regulations * * * as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission elsewhere in [the Act].'' We are proposing rule 206(4)–7 as necessary and appropriate to the exercise of the authority specifically conferred on us elsewhere in the Act, including section 204 of the Advisers Act (authority to examine advisers) and section 209 of the Advisers Act [15 U.S.C. 80b–9] (authority to enforce the provisions of the Advisers Act).

(a)(4)(ii) of this section for at least five years after the end of the fiscal year in which the report is provided to the board, the first two years in an easily accessible place.

(d) For purposes of this section, *Federal Securities Laws* means the Securities Act of 1933 (15 U.S.C. 77a), the Securities Exchange Act of 1934 (15 U.S.C. 78a), the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745 (2002)), the Investment Company Act of 1940 (15 U.S.C. 80a), the Investment Advisers Act of 1940 (15 U.S.C. 80b), Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801), any rules adopted by the Commission under any of these statutes, the Bank Secrecy Act (31 U.S.C. 5311) as it applies to funds, and any rules adopted thereunder by the Commission or the Department of the Treasury.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

3. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

4. Section 275.204–2 is amended by adding new paragraph (a)(17) and by revising paragraph (e)(1). The additions and revisions read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(17)(i) A copy of the investment adviser's policies and procedures formulated pursuant to § 275.206(4)–7(a) of this chapter that are in effect, or at any time within the past five years were in effect, and

(ii) Any records documenting the investment adviser's annual review of those policies and procedures conducted pursuant to § 275.206(4)–7(b) of this chapter.

* * * * *

(e)(1) All books and records required to be made under the provisions of paragraphs (a) to (c)(1), inclusive, of this section (except for books and records required to be made under the provisions of paragraphs (a)(11), (a)(16), and (a)(17)(i) of this section), shall be maintained and preserved in an easily accessible place for a period of not less than five years, from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

* * * * *

5. Section 275.206(4)–7 is added to read as follows:

§ 275.206(4)–7 Compliance procedures and practices.

If you are an investment adviser registered or required to be registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3), it is a fraudulent, deceptive or manipulative act, practice or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for you to provide investment advice to clients unless you:

(a) *Policies and procedures.* Adopt and implement written policies and procedures reasonably designed to prevent violation, by you and your supervised persons, of the Act and the rules that the Commission has adopted under the Act;

(b) *Annual review.* Review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation; and

(c) *Chief compliance officer.* Designate an individual (who is a supervised person) responsible for administering the policies and procedures that you adopt under paragraph (a) of this section.

By the Commission.

Dated: February 5, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–3315 Filed 2–10–03; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Tuesday,
February 11, 2003

Part IV

The President

Proclamation 7647—Establishment of the Governors Island National Monument

Federal Register
Vol. 68, No. 28
Tuesday, February 11, 2003

Presidential Documents

Title 3—

The President

Proclamation 7647 of February 7, 2003

Establishment of the Governors Island National Monument

By the President of the United States of America

A Proclamation

On the north tip of Governors Island, at the confluence of the Hudson and East Rivers, stand two fortifications that served as an outpost to protect New York City from sea attack. These two important historic objects, Castle Williams and Fort Jay, are part of a National Historic Landmark District designated in 1985. Between 1806 and 1811, these fortifications were constructed as part of the First and Second American Systems of Coastal Fortification. Castle Williams and Fort Jay represent two of the finest examples of defensive structures in use from the Renaissance to the American Civil War. They also played important roles in the War of 1812, the American Civil War, and World Wars I and II.

These fortifications were built on the most strategic defensive positions on the island. Fort Jay, constructed between 1806 and 1809, is on the highest point of the island from which its glacis originally sloped down to the waterfront on all sides. Castle Williams, constructed between 1807 and 1811, occupies a rocky promontory as close as possible to the harbor channels and served as the most important strategic defensive point in the entrance to the New York Harbor.

Governors Island was managed by the United States Army and the United States Coast Guard for nearly 200 years, but is no longer required for defense or Coast Guard purposes. It provides an excellent opportunity for the public to observe and understand the harbor history, its defense, and its ecology. Its proximity to lower Manhattan also makes it an appropriate location from which to reflect upon the tragic events of September 11, 2001.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) (the ''Antiquities Act''), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

A Governors Island National Monument was established by Proclamation 7402 of January 19, 2001, in order to protect the two fortifications. The monument, however, remained subject to Public Law 105–33, section 9101, 111 Stat. 670 (August 5, 1997), which required the entire island, including the monument lands, to be sold with a right of first offer to the State and City of New York.

WHEREAS the State and City of New York each executed a consent and waiver of the right of first offer regarding Governors Island; and

WHEREAS the portion of Governors Island described on the accompanying land description was sold to the National Trust for Historic Preservation (National Trust), on January 31, 2003, and the remainder of Governors Island was sold to the Governors Island Preservation and Education Corporation (GIPEC) of the State and City of New York, on January 31, 2003; and

WHEREAS the National Trust, on January 31, 2003, relinquished and conveyed to the United States of America all lands owned by the National Trust on Governors Island; and

WHEREAS such relinquishment and conveyance have been accepted by the Secretary of the Interior (Secretary) pursuant to the Antiquities Act; and

WHEREAS it appears that it would be in the public interest to preserve Castle Williams, Fort Jay, and certain lands and buildings necessary for the care and management of the Castle and Fort as the Governors Island National Monument;

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Governors Island National Monument for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries described on the accompanying land description, which is attached to and forms a part of this proclamation. The Federal land and interests in land reserved consist of approximately 22 acres, together with appurtenant easements for all necessary purposes and any associated federally owned personal property of historic interest, which is the smallest area compatible with the property care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

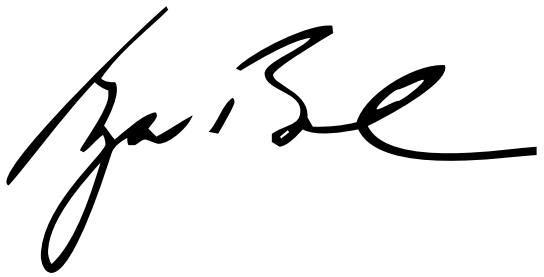
The Secretary shall manage the monument consistent with the purposes and provisions of this proclamation. For the purpose of preserving, restoring, and enhancing the public visitation and appreciation of the monument, the Secretary shall prepare a management plan for the monument within 3 years of the date of this proclamation. Further, to the extent authorized by law, the Secretary shall promulgate any additional regulations needed for the proper care and management of the objects identified above.

The establishment of this monument is subject to valid existing rights, if any such rights are present.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of February, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



Billing code 3195–01–P

Description of Lands in Governors Island National Monument

This document describes the lands that are set apart and reserved as the Governors Island National Monument pursuant to the accompanying proclamation. The national monument boundaries include the lands identified as Tract 01–101, Tract 01–102, Tract 01–103, and Tract 01–104. Legal descriptions of these tracts are set out below. These tracts also appear on the map entitled ''Governors Island National Monument, Boundary Map,'' dated August 20, 2002, map number 019/80,001A, which is attached to this document for reference purposes.

The United States owns Tract 01–101, Tract 01–102, and Tract 01–103 in fee simple. Within Tract 01–104, the United States owns a perpetual and exclusive right and easement consisting of the right, but not the obligation, to utilize, occupy, manage, reconstruct, remodel, maintain, and improve approximately 1,000 square feet on the first (1st) floor in the Building known as ''Building 140'' located on that portion of the land known and identified as Tract 01–104. As set out in the accompanying proclamation, the National Park Service will manage all property owned by the United States within the national monument boundary.

The national monument will also include all rights, hereditaments, easements, and appurtenances to property owned by the United States, belonging or otherwise appertaining, as well as any associated federally owned personal property of historic interest.

Tract 01–101

All that certain tract or parcel of land lying and being situated on Governors Island in the City of New York, New York County, State of New York, and being more particularly described as follows:

Beginning at a point at the intersection of the southerly side of Andes Road and the base of a concrete retaining wall on the southerly side of Andes Road, said point of beginning being South 14° 28' 10'' West, 141.01 feet from the southeasterly corner of Building 107, said point of beginning being further described as being at North 677,056.72 and East 626,751.86, said coordinates being based upon the New York State Plane Coordinates, East Zone, NAD 1983; thence from said point of beginning, severing the lands of the subject owner, the following forty four (44) courses and distances:

1. South 80° 58' 48'' East, along the said intersection of the southerly side of Andes Road and the base of a concrete retaining wall on the southerly side of Andes Road, 55.80 feet to a point;

2. South 45° 14' 55'' East, along the intersection of the base of a concrete retaining wall and sidewalk, 4.40 feet to a point;

3. South 24° 46' 24'' East, along the said intersection of the base of a concrete retaining wall and sidewalk, 13.37 feet to a point;

4. South 16° 56' 20'' East, along the said intersection of the base of a concrete retaining wall and sidewalk, 13.16 feet to a point;

5. South 10° 05' 36'' East, along the said intersection of the base of a concrete retaining wall and sidewalk, 15.64 feet to a point on the westerly edge of a brick sidewalk;

6. South 05° 40' 25'' West, along the said westerly edge of a brick sidewalk, 274.67 feet to a point;

7. North 84° 45' 49'' West, along the northerly edge of said brick sidewalk, 84.24 feet to a point;

8. South 45° 45' 14'' West, along the northwesterly edge of said brick sidewalk, 24.85 feet to a point on the back of the concrete curb on the northerly side of the cul-de-sac on Evans Road;

9. A non-tangent curve to the left, along the said back of the concrete curb on the northerly side of the cul-de-sac on Evans Road, having a radius of 34.00 feet, a central angle of 132° 11' 45'' and an arc length of 78.45 feet to a point, said curve having a chord bearing and distance of South 69° 51' 24'' West, 62.17 feet;

10. North 81° 25' 23'' West, leaving the said back of the concrete curb and crossing the Parade Ground, 764.47 feet to a point on the northeasterly face of a concrete curb on the northeasterly side of Comfort Road;

11. North 23° 06' 23'' West, along the said northeasterly face of a concrete curb on the northeasterly side of Comfort Road, 94.46 feet to a point of curve;

12. A curve to the right, along the said northeasterly face of a concrete curb on the northeasterly side of Comfort Road, having a radius of 80.00 feet, a central angle of 41° 01' 44'' and an arc length of 57.29 feet to a point of reverse curve;

13. A curve to the left, along the said northeasterly face of a concrete curb on the northeasterly side of Comfort Road, having a radius of 70.67 feet, a central angle of 41° 04' 47'' and an arc length of 50.67 feet to a point of tangent;

14. North 23° 09' 26'' West, along the intersection of the northeasterly side of Comfort Road and the said face of a concrete curb on the northeasterly side of Comfort Road, 240.84 feet to a point;

15. North 46° 15' 33'' West, along the said intersection of the northeasterly side of Comfort Road and the said face of a concrete curb on the northeasterly side of Comfort Road and its northwesterly projection thereof, 111.36 feet, crossing Tampa Road to a point at the intersection of the northerly side of an access road and the face of a concrete curb on the northerly side of the access road;

16. South 86° 21' 32'' West, along the said intersection of the northerly side of an access road and the face of a concrete curb on the northerly side of the access road and its westerly projection thereof, 133.51 feet to a point;

17. North 85° 02' 31'' West, crossing Hay Road and along the back of a concrete curb on the southerly side of an asphalt parking lot, 139.69 feet to a point at the intersection of the easterly side of an access road and the face of a concrete curb on the easterly side of the access road;

18. North 06° 11' 10'' East, along the said intersection of the easterly side of an access road and the face of a concrete curb on the easterly side of the access road, 8.97 feet;

19. North 84° 30' 23'' West, passing through a brick connecting-wall between Building 513A and Building 515, and along the back of a concrete curb, 200.29 feet to a point at the intersection of the easterly side of Carder Road and the face of a concrete curb on the easterly side of Carder Road;

20. North 09° 30' 51'' East, along the said intersection of the easterly side of Carder Road and the face of a concrete curb on the easterly side of Carder Road and its northerly projection thereof, 35.34 feet to a point;

21. North 16° 40' 16'' East, along the said easterly side of Carder Road, 98.56 feet to a point at the intersection of the easterly side of Carder Road and the face of a concrete curb on the easterly side of Carder Road;

22. North 17° 39' 33'' East, along the said intersection of the easterly side of Carder Road and the face of a concrete curb on the easterly side of Carder Road, 180.86 feet to a point;

23. North 23° 48' 41'' East, along the said intersection of the easterly side of Carder Road and the face of a concrete curb on the easterly side of Carder Road, 83.68 feet to a point of curve;

24. A curve to the right, along the said intersection of the easterly and southerly side of Carder Road and the face of a concrete curb on the easterly and southerly side of Carder Road, having a radius of 100.46 feet, a central angle of 69° 53' 28'' and an arc length of 122.55 feet to a point of tangent;

25. South 86° 17' 52'' East, continuing along the said intersection of the southerly side of Carder Road and the face of a concrete curb on the southerly side of Carder Road and its easterly projection thereof, 149.02 feet, crossing Hay Road to a point;

26. South 08° 57' 35'' West, along the easterly side of Hay Road, 120.18 feet to a point;

27. South 12° 12' 20'' East, 62.43 feet, crossing Andes Road to a point at the intersection of the southerly side of Andes Road and the face of a concrete curb on the southerly side of Andes Road;

28. A non-tangent curve to the right, along the said intersection of the southerly side of Andes Road and the face of a concrete curb on the southerly side of Andes Road, having a radius of 58.00 feet, a central angle of 48° 54' 20'' and an arc length of 49.51 feet to a point of tangent, said curve having a chord bearing and distance of North 70° 02' 51'' East, 48.02 feet;

29. South 85° 29' 59'' East, along the said intersection of the southerly side of Andes Road and the face of a concrete curb on the southerly side of Andes Road and its easterly projection thereof, 123.62 feet to a point;

30. South 85° 29' 44'' East, along the said intersection of the southerly side of Andes Road and the face of a concrete curb on the southerly side of Andes Road, 428.81 feet to a point;

31. South 85° 17' 33'' East, along the southerly face of a concrete curb on the southerly side of Andes Road, 107.02 feet to a point;

32. South 83° 11' 58'' East, along the said southerly face of a concrete curb on the southerly side of Andes Road, 49.20 feet to a point;

33. South 82° 30' 10'' East, along the said southerly face of a concrete curb on the southerly side of Andes Road, 49.51 feet to a point;

34. South 81° 33' 52'' East, along the said southerly face of a concrete curb on the southerly side of Andes Road, 86.61 feet to a point;

35. A non-tangent curve to the right, along the said southerly face of a concrete curb on the southerly side of Andes Road, having a radius of 8.50 feet, a central angle of 47° 16' 55'' and an arc length of 7.01 feet to a point, said curve having a chord bearing and distance of North 75° 41' 40'' East, 6.82 feet;

36. South 80° 39' 53'' East, along the said southerly face of a concrete curb on the southerly side of Andes Road, 8.32 feet to a point;

37. A non-tangent curve to the right, along the said southerly face of a concrete curb on the southerly side of Andes Road, having a radius of 8.00 feet, a central angle of 46° 10' 15'' and an arc length of 6.45 feet to a point, said curve having a chord bearing and distance of South 57° 34' 45'' East, 6.27 feet;

38. South 79° 00' 27'' East, along the said southerly face of a concrete curb on the southerly side of Andes Road, 41.54 feet to a point;

39. South 70° 49' 07'' East, along the said southerly face of a concrete curb on the southerly side of Andes Road, 61.48 feet to a point of curve;

40. A curve to the right, along the southwesterly face of a concrete curb on the southwesterly side of Andes Road, having a radius of 257.96 feet, a central angle of 21° 12' 48'' and an arc length of 95.51 feet to a point of compound curve;

41. A curve to the right, along the westerly face of a concrete curb on the westerly side of Andes Road, having a radius of 154.12 feet, a central angle of 48° 42' 34'' and an arc length of 131.02 feet to a point of tangent;

42. South 00° 53' 45'' East, along the intersection of the westerly side of Andes Road and the face of a concrete curb on the westerly side of Andes Road, 83.86 feet to a point of curve;

43. A curve to the left, along the said intersection of the westerly side of Andes Road and the face of a concrete curb on the westerly side of Andes Road, having a radius of 148.98 feet, a central angle of 16° 25' 57'' and an arc length of 42.73 feet to a point of tangent; and,

44. South 17° 19' 42'' East, along the said intersection of the westerly side of Andes Road and the face of a concrete curb on the westerly side of Andes Road and its southerly projection thereof, 155.84 feet to the point of beginning.

The above bearings are based on Grid North, New York State Plane Coordinates, East Zone, NAD 1983.

The above-described parcel is more particularly shown and described on a survey plat by Clough, Harbour & Associates, LLP.

Containing 21.69 acres, more or less.

Tract 01–102

All that certain tract or parcel of land lying and being situated on Governors Island in the City of New York, New York County, State of New York, and being more particularly described as follows:

Beginning at a point on the northerly side of Dock 102 on a line being the westerly projection of the northerly face of the lower concrete seawall, said point of beginning being South 74° 39' 57'' East, 535.78 feet from the southeasterly corner of Building 107, said point of beginning being further described as being at North 677,051.57 and East 627,303.76, said coordinates being based upon the New York State Plane Coordinates, East Zone, NAD 1983; thence from said point of beginning, severing the lands of the subject owner, the following eight (8) courses and distances:

1. South 88° 24' 18'' East, to and along said northerly face of the lower concrete seawall, 84.29 feet to a point;

2. South 01° 35' 54'' West, continuing along the easterly face of the lower concrete seawall, 22.82 feet to a point;

3. South 87° 30' 04'' East, along the wood face of Dock 102, 100.26 feet to a point;

4. South 02° 05' 32'' West, continuing along the said wood face of Dock 102, 19.27 feet to a point;

5. North 87° 31' 51'' West, continuing along the said wood face of Dock 102, 101.94 feet to a point on the easterly face of a stone or granite seawall;

6. South 00° 14' 20'' West, along the said easterly face of the stone or granite seawall, 6.34 feet to a point;

7. South 89° 25' 54'' West, to and along the southerly side (back) of the southerly concrete curb, 80.69 feet to a point; and,

8. North 00° 34' 06'' West, 51.53 feet to the point of beginning.

The above bearings are based on Grid North, New York State Plane Coordinates, East Zone, NAD 1983.

The above-described parcel is more particularly shown and described on a survey plat by Clough, Harbour & Associates, LLP.

Containing 0.14 of an acre, more or less (6,084 +/- square feet).

Tract 01–103

All that certain tract or parcel of land lying and being situated on Governors Island in the City of New York, New York County, State of New York, and being more particularly described as follows:

Beginning at a point at the intersection of the easterly side of Andes Road and the face of the concrete curb on the easterly side of Andes Road, said point of beginning being South 59° 06' 01'' West, 60.15 feet from the southeasterly corner of Building 107, said point of beginning being further described as being at North 677,162.36 and East 626,735.48, said coordinates being based upon the New York State Plane Coordinates, East Zone, NAD 1983; thence from said point of beginning, severing the lands of the subject owner, the following thirteen (13) courses and distances:

1. North 17° 19' 42'' West, 50.11 feet along the said intersection of the easterly side of Andes Road and the face of the concrete curb on the easterly side of Andes Road to a point of curve;

2. A curve to the right, along the said intersection of the easterly side of Andes Road and the face of the concrete curb on the easterly side of Andes Road, having a radius of 133.04 feet, a central angle of 16° 26'' 45' and an arc length of 38.19 feet to a point of tangent;

3. North 00° 53' 45'' West, along the said intersection of the easterly side of Andes Road and the face of the concrete curb on the easterly side of Andes Road, 83.86 feet to a point of curve;

4. A curve to the left, along the said intersection of the easterly side of Andes Road and the face of the concrete curb on the easterly side of Andes Road, having a radius of 169.95 feet, a central angle of 10° 50' 45'' and an arc length of 32.17 feet to a point of reverse curve;

5. A curve to the right, along the said intersection of the easterly side of Andes Road and the face of the concrete curb on the easterly side of Andes Road, having a radius of 20.64 feet, a central angle of 108deg; 22' 59'' and an arc length 39.04 feet to a point of tangent;

6. South 83° 21' 31'' East, along the intersection of the southerly side of the access road between Building 107 and Building 108 and the face of the concrete curb on the southerly side of said access road, 69.23 feet to a point of curve;

7. A curve to the right, along the said intersection of the southerly side of the access road between Building 107 and Building 108 and the face of the concrete curb on the southerly side of said access road, having a radius of 16.08 feet, a central angle of 78° 17' 48'' and an arc length of 21.97 feet to a point of tangent;

8. South 05° 03' 43'' East, along the intersection of the westerly side of the access road between Building 107 and Building 135A, B & C and the face of the concrete curb on the westerly side of the access road, 10.73 feet to a point;

9. South 06° 11' 02'' West, 106.20 feet to a point;

10. South 08° 26' 06'' West, 37.63 feet to a point;

11. South 06° 06' 28'' West, 39.06 feet to a point;

12. North 85° 53' 21'' West, along the southerly side of the retaining wall and steps/banister, 20.09 feet to a point; and,

13. South 72° 31' 49'' West, through the sidewalk adjacent to Building 106, 41.42 feet to the point of beginning.

The above bearings are based on Grid North, New York State Plane Coordinates, East Zone, NAD 1983.

The above-described parcel is more particularly shown and described on a survey plat by Clough, Harbour & Associates, LLP.

Containing 0.44 of an acre, more or less (19,354 +/- square feet).

Tract 01–104

All that certain tract or parcel of land lying and being situated on Governors Island in the City of New York, New York County, State of New York, and being more particularly described as follows:

Beginning at a point on the northerly side of Carder Road on the southerly projection of the easterly face (back) of the concrete curb at the east end of the parking lot immediately adjacent to Building 140, said point of beginning being South 80° 04' 13'' East, 115.55 feet from the southeasterly corner of Building 140, said point of beginning being further described as being at North 677,594.25 and East 626,794.40, said coordinates being based upon the New York State Plane Coordinates, East Zone, NAD 1983; thence from said point of beginning, severing the lands of the subject owner, the following ten (10) courses and distances:

1. North 83° 26' 43'' West, 87.06 feet to a point in said Carder Road;

2. North 75° 34' 32'' West, 181.16 feet to a point in said Carder Road;

3. North 14° 25' 29'' East, 4.94 feet to a point at the intersection of the northerly side of Carder Road and the face of the concrete curb on the northerly side of Carder Road;

4. North 75° 50'11'' West, along the said intersection of the northerly side of Carder Road and the face of the concrete curb on the northerly side of Carder Road, 12.81 feet to a point;

5. A non-tangent curve to the right, along the said intersection of the northerly side of Carder Road and the face of the concrete curb on the northerly side of Carder Road, having a radius of 12.88 feet, a central angle of 75° 32' 13'' and an arc length of 16.98 feet to a point, said curve having a chord bearing and distance of North 19° 31' 30'' West, 15.78 feet to a point;

6. North 35° 19' 06'' East, along the intersection of the easterly side of the Soissons Docks access road and the face of the concrete sidewalk on the easterly side of the Soissons Docks access road, 57.05 feet to a point;

7. South 50° 30' 54'' East, 7.92 feet to a point on the eastern side of a brick retaining wall;

8. North 35° 17' 38'' East, along and parallel to the said eastern side of a brick retaining wall, 15.36 feet to a point on the southerly side of the granite seawall;

9. South 75° 38' 30'' East, along the southerly side of the granite seawall, 255.90 feet to a point; and,

10. South 14° 18' 59'' West, 70.64 feet to the point of beginning.

The above bearings are based on Grid North, New York State Plane Coordinates, East Zone, NAD 1983.

The above-described parcel is more particularly shown and described on a survey plat by Clough, Harbour & Associates, LLP.

Containing 0.51 of an acre, more or less (22,265 +/- square feet).

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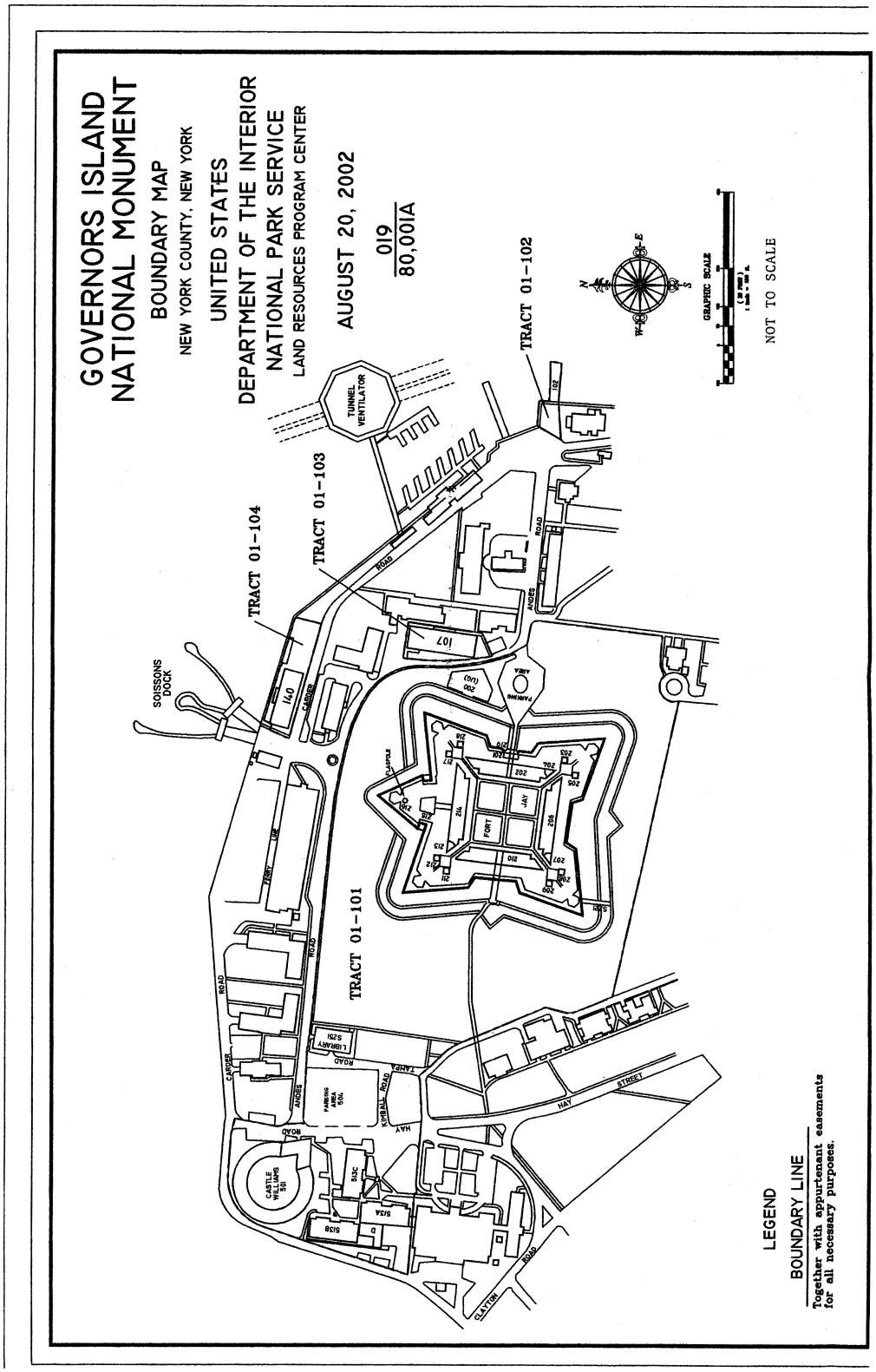

[FR Doc. 03–3548

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Vol. 68, No. 28

Tuesday, February 11, 2003

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

5203–5528 3
5529–5784 4
5785–6060 5
6061–6338 6
6339–6602 7
6603–6814 10
6815–7062 11

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7644 6055
7645 6057
7646 6059
7647 7053

Executive Orders:
13285 5203

Presidential Determinations:
No. 2003-13 of January 29, 2003 5785
No. 2003-14 of January 30, 2003 5787

5 CFR

576 5529
875 5530
890 5470

Proposed Rules:
890 6649

7 CFR

1 39
301 ..... 5793, 5794, 6603
318 ..... 5796, 5800
319 6544
330 6341
354 6341
1413 5205

Proposed Rules:
319 6352
360 6653
1466 6655

9 CFR

4 6341
11 6341
12 6341
49 6341
50 6341
51 6341
52 6341
53 6341
54 6341
70 6341
71 6341
72 6341
73 6341
74 6341
75 6341
77 6341
78 6341
79 6341
80 6341
85 6341
89 6341
91 6341
92 6341
93 6341
94 ..... 5802, 6341
95 6341
96 6341
97 6341
98 6341
99 6341
122 6341
123 6341
124 6341
130 6341
145 6341
147 6341
160 6341
161 6341
162 6341
166 6341

Proposed Rules:
94 6673

11 CFR

110 6346

12 CFR

272 6061
1805 5704
1806 5717

Proposed Rules:
3 6363
5 6363
6 6363
7 6363
9 6363
28 6363
34 6363
609 5595
611 5587
612 5587
614 ..... 5587, 5595
615 5595
617 ..... 5587, 5595

13 CFR

Proposed Rules:
120 5234
121 5234

14 CFR

23 5538
25 5208
39 ..... 5541, 5805, 5808, 5810, 5812, 5815, 5818, 5819, 5822, 6347, 6815
71 ..... 6606, 6607
97 ..... 6816, 6818
119 5782
121 5782
129 5782
135 5782
150 6608
183 5782

Proposed Rules:
1 6802
39 ..... 5610, 5856, 6376, 6379, 6380, 6382, 6383
71 ..... 5613, 6677
91 6802

121.....6802
125.....5488, 6802
135.....5488, 6802

15 CFR

2016.....5542

17 CFR

1.....5545
30.....5545
190.....5545
205.....6296
210.....6006
228.....5982
229.....5982
239.....6564
240.....5348, 6006
249 .....5348, 5982, 6006, 6564
270.....5348, 6564
274 .....5348, 6006, 6564
275.....6585
Proposed Rules:
205.....6324
240.....6324
249.....6324
270.....7038
275.....7038

18 CFR

375.....6608

20 CFR

260.....6820
320.....6820
404.....5210
416.....5210

21 CFR

58.....6609
201.....6062
529.....5562
558.....6820
866.....5825
Proposed Rules:
1.....5378, 5428

22 CFR

123.....6609
Proposed Rules:
307.....5857

23 CFR

Proposed Rules:
1225.....6091

24 CFR

234.....6396
Proposed Rules:
902.....6262
3500.....6385

26 CFR

1 .....5346, 6081, 6350

28 CFR

522.....5563

30 CFR

100.....6609
Proposed Rules:
917.....6838
934.....6842

31 CFR

103.....6613
501.....6820

32 CFR

199.....6617
254.....6082
706 .....5827, 5828, 5829, 5830, 5831

33 CFR

117.....5832, 6621
165.....5833
Proposed Rules:
117.....5858, 6100
165.....5614, 6844
385.....5860

37 CFR

Proposed Rules:
201.....6678

38 CFR

19.....6621
36.....6625
Proposed Rules:
3.....6679, 6998
4.....6998

40 CFR

52 .....5221, 5228, 6627, 6629
61.....6082
62.....6630, 6633
63.....6635
180 .....5835, 5839, 5847
Proposed Rules:
52 .....5246, 5263, 6681
62.....6681, 6682

42 CFR

405.....6636
419.....6636
Proposed Rules:
413.....6682

44 CFR

64.....5852
65 .....6644, 6823, 6826
67.....6828, 6830
Proposed Rules:
61.....5264
67.....6847, 6861

46 CFR

356.....5564

47 CFR

32.....6351
53.....6351
54.....6646, 6832
64.....6351, 6352
73 .....5583, 5584, 5854, 5855, 6082
Proposed Rules:
0.....6689
43.....6689
63.....6689
64.....6689
73 .....5616, 5617, 5860, 5861, 5862
90.....6687, 6688

48 CFR

923.....6355
936.....6355
970.....6355
1804.....5230
1827.....5230
1835.....5230
1852.....5230
Proposed Rules:
2.....5774
31.....5774
52.....5778

49 CFR

571.....6359
1570.....6083
1572.....6083
Proposed Rules:
173.....6689
192.....6385
571.....5863
1180.....6695

50 CFR

622.....6360
648.....6088
679.....5585, 6833
Proposed Rules:
17.....6863
20.....6697
21.....6697
92.....6697
300.....6103
600.....6863
679.....6386, 6865

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 11, 2003

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Agricultural Bioterrorism Protection Act:

Biological agents and toxins; possession; published 12-13-02

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Federal-State Joint Board on Universal Service—

Universal service contribution methodology; published 2-11-03

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:

Medicare Part B services (other than physician services); application of inherent reasonableness; published 12-13-02

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Salinomycin; published 2-11-03

RAILROAD RETIREMENT BOARD

Railroad Retirement Act:

Reconsideration and appeals requests; procedures clarification; correction; published 2-11-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Standard instrument approach procedures; published 2-11-03

TREASURY DEPARTMENT

Foreign Assets Control Office

Reporting and procedures regulations:

Civil penalties information; disclosure; published 2-11-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, foreign:

Hot water dip treatment for mangoes; comments due by 2-18-03; published 1-2-03 [FR 02-33049]

Ya pears from China; comments due by 2-18-03; published 12-20-02 [FR 02-32056]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant related quarantine; domestic:

Mexican fruit fly; comments due by 2-21-03; published 12-23-02 [FR 02-32178]

AGRICULTURE DEPARTMENT

Forest Service

National Forest System lands; projects and activities; notice, comment, and appeal procedures; comments due by 2-18-03; published 12-18-02 [FR 02-31681]

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:

Rural Business Enterprise and Television Demonstration Grant Programs; rural area definition, etc.; comments due by 2-18-03; published 12-20-02 [FR 02-32050]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meetings:

Listeria risk assessment; comments due by 2-21-03; published 2-6-03 [FR 03-02942]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Support activities:

Technical service provider assistance; comments due by 2-19-03; published 11-21-02 [FR 02-29301]

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:

Rural Business Enterprise and Television Demonstration Grant Programs; rural area definition, etc.; comments due by 2-18-03; published 12-20-02 [FR 02-32050]

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:

Rural Business Enterprise and Television Demonstration Grant Programs; rural area definition, etc.; comments due by 2-18-03; published 12-20-02 [FR 02-32050]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:

Rural Business Enterprise and Television Demonstration Grant Programs; rural area definition, etc.; comments due by 2-18-03; published 12-20-02 [FR 02-32050]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic highly migratory species—

Atlantic tunas, swordfish, and sharks; comments due by 2-17-03; published 1-27-03 [FR 03-01786]

International fisheries regulations:

Pacific halibut—

Catch sharing plan and sport fishing management; comments due by 2-18-03; published 2-6-03 [FR 03-02806]

DEFENSE DEPARTMENT

Acquisition regulations:

Governmentwide commercial purchase card internal controls; comments due by 2-18-03; published 12-20-02 [FR 02-31948]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Iron and steel foundries; comments due by 2-21-03; published 12-23-02 [FR 02-31234]

Lime manufacturing plants; comments due by 2-18-03; published 12-20-02 [FR 02-31233]

Primary magnesium refining facilities; comments due by 2-21-03; published 1-22-03 [FR 03-00089]

Taconite iron ore processing plants; comments due by 2-18-03; published 12-18-02 [FR 02-31231]

Air quality implementation plans; approval and promulgation; various States:

Florida; comments due by 2-18-03; published 1-16-03 [FR 03-00857]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Florida; comments due by 2-18-03; published 1-16-03 [FR 03-00858]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Maryland; comments due by 2-18-03; published 1-16-03 [FR 03-00854]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Maryland; comments due by 2-18-03; published 1-16-03 [FR 03-00855]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Nevada; comments due by 2-21-03; published 1-22-03 [FR 03-01145]

Ohio; comments due by 2-18-03; published 1-16-03 [FR 03-00961]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Ohio; comments due by 2-18-03; published 1-16-03 [FR 03-00962]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Ohio; comments due by 2-21-03; published 1-22-03 [FR 03-01235]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and

promulgation; various States:
Ohio; comments due by 2-21-03; published 1-22-03 [FR 03-01236]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Oregon; comments due by 2-21-03; published 1-22-03 [FR 03-00852]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Oregon; comments due by 2-21-03; published 1-22-03 [FR 03-00853]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 2-18-03; published 1-17-03 [FR 03-00731]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania; comments due by 2-18-03; published 1-17-03 [FR 03-00732]

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 2-18-03; published 1-16-03 [FR 03-00733]

ENVIRONMENTAL PROTECTION AGENCY
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 2-18-03; published 1-16-03 [FR 03-00734]
National priorities list update; comments due by 2-20-03; published 1-21-03 [FR 03-01144]

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
International Settlements Policy reform and international settlement rates; comments due by 2-18-03; published 2-10-03 [FR 03-03137]
Radio services, special:
Private land mobile radio services —
Public safety communications in the 800 MHz band, etc.; supplemental comments; comments due by 2-18-03; published 2-10-03 [FR 03-03276]

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Grants and cooperative agreements; availability, etc.:
Community Services Block Grants; charitable choice provisions; comments due by 2-18-03; published 12-17-02 [FR 02-31675]
Temporary Assistance for Needy Families Program:
Charitable Choice provisions; comments due by 2-18-03; published 12-17-02 [FR 02-31674]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food for human consumption:
Food labeling—
D-tagatose and dental caries; health claims; comments due by 2-18-03; published 12-2-02 [FR 02-30474]

HEALTH AND HUMAN SERVICES DEPARTMENT
Grants:
Substance Abuse Prevention and Treatment Block Grant and Projects for Assistance in Transition from Homelessness Programs; charitable choice provisions; comments due by 2-18-03; published 12-17-02 [FR 02-31673]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Alabama; comments due by 2-18-03; published 1-16-03 [FR 03-00975]
Maryland; comments due by 2-18-03; published 1-16-03 [FR 03-00979]

JUSTICE DEPARTMENT
Prisons Bureau
Inmate control, custody, care, etc.:
Inmate discipline respecting violations of telephone and smoking policies; code number changes for agency tracking purposes only; comments due by 2-18-03; published 12-18-02 [FR 02-31661]

LABOR DEPARTMENT
Mine Safety and Health Administration
Mining products; testing, evaluation, and approval:
Mobile battery-powered machines; plug and receptacle-type connectors; alternate locking devices; comments due by 2-21-03; published 1-22-03 [FR 03-01305]

LABOR DEPARTMENT
Mine Safety and Health Administration
Mining products; testing, evaluation, and approval:
Mobile battery-powered machines; plug and receptacle-type connectors; alternate locking devices; comments due by 2-21-03; published 1-22-03 [FR 03-01306]

RAILROAD RETIREMENT BOARD
Railroad Retirement Act:
Account benefits ratio; comments due by 2-18-03; published 12-18-02 [FR 02-31776]
Annuity or lump sum application; Internet filing; comments due by 2-18-03; published 12-18-02 [FR 02-31775]

SECURITIES AND EXCHANGE COMMISSION
Securities:
Issuer repurchases; safe harbor provisions; amendments; comments due by 2-18-03; published 12-18-02 [FR 02-31656]

SECURITIES AND EXCHANGE COMMISSION
Securities:
Sarbanes-Oxley Act of 2002; implementation—
Disclosure requirements; comments due by 2-18-03; published 1-31-03 [FR 03-02018]

SECURITIES AND EXCHANGE COMMISSION
Securities:
Sarbanes-Oxley Act of 2002; implementation—
Listed company audit committees; standards; comments due by 2-18-03; published 1-17-03 [FR 03-00690]

SOCIAL SECURITY ADMINISTRATION
Administrative regulations:
Federal Tort Claims Act and Military Personnel and Civilian Employees Claims Act; claims; comments due by 2-18-03; published 12-20-02 [FR 02-32051]
Social security benefits and supplemental security income:
Federal old-age, survivors, and disability benefits, and aged, blind, and disabled—
Multiple body system impairments; medical criteria evaluation; comments due by 2-21-03; published 12-23-02 [FR 02-32217]

STATE DEPARTMENT
Visas; immigrant and nonimmigrant documentation:
Uncertified foreign health-care workers; comments due by 2-18-03; published 12-17-02 [FR 02-31603]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 2-18-03; published 1-3-03 [FR 03-00048]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Eurocopter France; comments due by 2-18-03; published 12-18-02 [FR 02-31751]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
McDonnell Douglas; comments due by 2-18-03; published 1-3-03 [FR 03-00047]
Raytheon; comments due by 2-18-03; published 1-3-03 [FR 03-00049]
Stemme GmbH & Co. KG; comments due by 2-21-03; published 1-14-03 [FR 03-00673]
Airworthiness standards:
Special conditions—
Pratt & Whitney Canada PT6-67D turbine engine;

comments due by 2-18-03; published 1-16-03 [FR 03-01010]

TREASURY DEPARTMENT

Internal Revenue Service

Agency information collection activities:

Proposed collection; comment request; comments due by 2-21-03; published 12-23-02 [FR 02-32154]

Income taxes:

Outbound liquidations to foreign corporations; anti-abuse rule guidance; comments due by 2-18-03; published 11-20-02 [FR 02-29508]

Rents and royalties; advance rentals inclusion in gross income; comments due by 2-18-03; published 12-18-02 [FR 02-31858]

Taxable stock transactions; information reporting requirement; cross-reference; comments due by 2-18-03; published 11-18-02 [FR 02-29200]

TREASURY DEPARTMENT

Practice and procedure:

Practice before Internal Revenue Service; comments due by 2-18-03; published 12-19-02 [FR 02-31989]

VETERANS AFFAIRS DEPARTMENT

Privacy Act; implementation; comments due by 2-18-03; published 12-19-02 [FR 02-31708]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.J. Res. 18/P.L. 108–5
Making further continuing appropriations for the fiscal year 2003, and for other purposes. (Feb. 7, 2003; 117 Stat. 9)

Last List February 4, 2003

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